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ABSTRACT

Designed to help high school students, this curriculum guides youngsters to develop a better understanding of difficult issues raised by questions of justice. It is hoped that the ideas, observations, questions, and procedures students learn in the curriculum will help them to make informed decisions about how to promote justice and combat injustice in their own lives and the world around them. Fifteen lessons, organized into four units, comprise the guide. Unit 1, What is Justice, includes (1) Why divide issues of justice into three categories? and (2) How do our nation's founding documents promote justice? Unit 2, What is Distributive Justice?, features (3) How can intellectual tools be used to analyze issues of distributive justice? (4) A problem of distributive justice: who should get the airline pass? and (5) What other values and interests should be considered when dealing with issues of distributive justice? Unit 3, What is Corrective Justice?, contains (6) What is the first intellectual tool useful in making decisions about issues of corrective justice? (7) What other intellectual tools are useful in making decisions about corrective justice? (8) What responses can we make to wrongs and injuries? (9) How would you solve these problems of corrective justice? and (10) What response would you recommend in this case about ethics in government? Unit 4, What is procedural justice?, presents (11) What intellectual tools can help you evaluate issues of procedural justice? (12) What other values and interests should be considered in determining whether procedures are fair? (13) Is procedural justice always important? and (14) How do you balance the goals of procedural justice with other interests of our society? The 15th lesson is a program review, Are there situations which raise issues in all three categories of justice? (DB)

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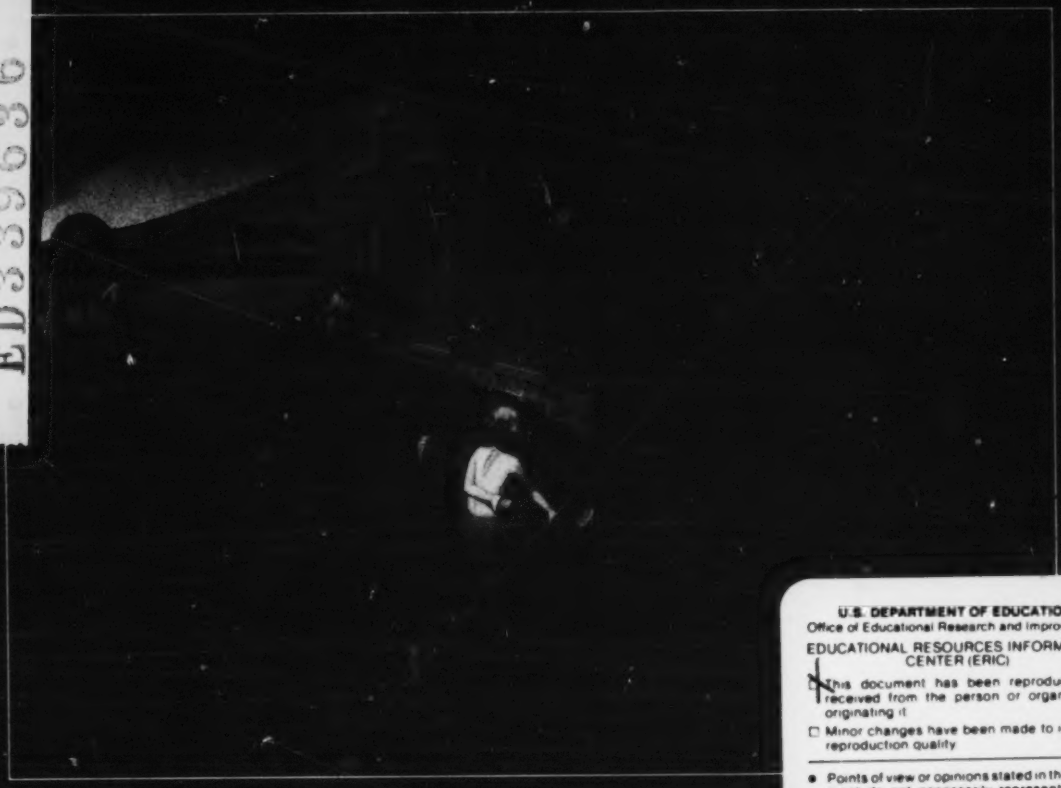

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Level VI

Center for Civic Education

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JUSTICE

Law in a Free Society Series

Level VI

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Cover: 1970.43 *Parson Weems' Fable*, Grant Wood,
oil on canvas, 1939
Amon Carter Museum, Fort Worth

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Second Edition

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Preface

Equal and exact justice to all men, of whatever state or persuasion, religious or political....
President George Washington, 1801

A desire for justice led to the writing of the Declaration of Independence. "To establish justice" is one of the goals listed in the Preamble to the United States Constitution. From the inception of our nation, justice has been an abiding principle and value.

Unfortunately, however, reality has often fallen short of the ideal. And at times, justice has been sacrificed to fear, prejudice, greed, and ignorance.

Martin Luther King, Jr., wrote, "Injustice anywhere is a threat to justice everywhere." That is why the citizens of a nation conceived in justice have a special duty to understand the problems inherent in the attainment of a just society.

The purpose of this text is to help you develop a better understanding of the difficult issues raised by questions of justice. It will increase your knowledge of these issues and help you develop the intellectual tools to analyze them.

Often there are no easy answers, simple solutions, or pat formulas to decide what is fair or unfair. However, it is hoped that the ideas, observations, questions, and procedures you will learn in this book will help you make informed decisions about how to promote justice and combat injustice in your own lives and the world around you.

Unit 1
What Is Justice?

"The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Anatole France
La Lys Rouge, 1894

Questions about justice are not new. They have been raised for thousands of years. The strength of our feelings about justice and our attempts to achieve it have shaped the history of our country. The fundamental documents of our political system, the Declaration of Independence and the Constitution, show our historical commitment to the pursuit of justice.

Issues involving justice come up in our daily lives as well. It is almost impossible to read a newspaper or watch television without facing a matter of justice or injustice in public or private life.

But what do we mean by justice? And how can we judge if we or others are achieving justice? These are the questions we will be considering in this program.

What point was the French novelist, Anatole France, making about justice in his own society, 19th century France? Do you think his statement is still relevant in today's world?

Justice, as the term is used here, means roughly the same thing as fairness. In this unit, you will learn that issues of justice may be divided into three major categories. You will also have a chance to examine and make decisions about what is just or fair in specific situations.

Lesson 1

Why Divide Issues of Justice Into Three Categories?

- At the end of the week, Consuelo received her paycheck. It was for $72. She was upset and angry when she learned that Paul had received $114 for doing the same type and amount of work.
- During the riot, Ivan had been arrested, dragged off the street by the secret police, and thrown into a small cell. That night he was taken to a room and questioned for about 10 minutes by three angry men. Just as he began to realize that he was being tried, the man in the center banged a gavel on the table and declared, "Guilty of rebellion against the government. Sentenced to death by firing squad at once!" Ivan was taken outside, stood up against a wall, and shot.
- Jean Valjean, the principal character in the novel *Les Miserables* by Victor Hugo, was sentenced to prison for many years for stealing a loaf of bread to feed his starving sister and her children.

As you read each of the above situations, you may have had a common reaction: "That's not fair!" or "That's not just!"

In this lesson, you will begin to learn how to identify and analyze issues of justice. By doing so, you will take the first step in learning how to preserve justice and combat injustices you may see around you.

What do you think?

1. What is fair or unfair about each situation described on page 4?
2. How are these three situations the same or different?
3. What would you do to correct each injustice?

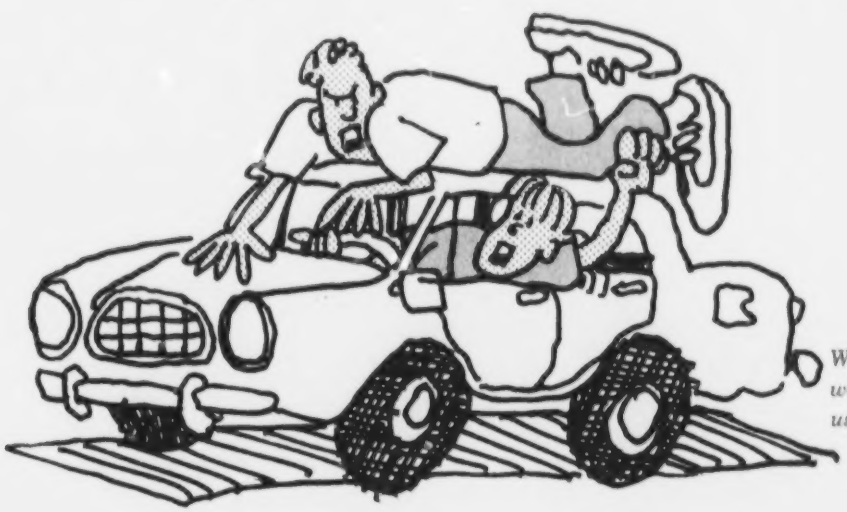
What are the three categories into which issues of justice are divided?

For more than 2,000 years, philosophers have divided issues of justice into three categories. These categories are **distributive justice, corrective justice, and procedural justice.**

DISTRIBUTIVE JUSTICE: Imagine you are playing Monopoly. The banker gives everyone $200 for passing GO except you.

When we are concerned about the fairness of the distribution of something among several people or groups, we are dealing with an issue of distributive justice.

What is being distributed can be a benefit, such as pay for work or the right to speak or vote. It can also be a burden, such as taxes, household chores, or homework.



What would be a fair way to decide who can use the family car?

CORRECTIVE JUSTICE: You are five minutes late for team practice. You've never been late before but the coach wants to set an example and benches you for the next two games.

When we are concerned about the fairness of a response to a wrong or injury, we are dealing with an issue of corrective justice.

Common responses include making a person who has wronged or injured another give back something that was stolen, pay for damages, or suffer some form of punishment.

What would be a fair solution to this problem?

PROCEDURAL JUSTICE: You and your cousin get in an argument. Your parents listen to his side of the story, but not to yours.

When we are concerned about the fairness of the way information is gathered or the fairness of the way a decision is made, we are dealing with an issue of procedural justice.

For example, information might be gained from a person suspected of a crime by means of torture or by means of an unbiased investigation. A decision might be made after allowing all people interested in an issue to be heard, or it might be made without giving all interested parties a chance to make their views known.

Procedural justice deals with the fairness of how information is gathered or how decisions are made, not with what information is gathered or what decisions are made.

Should students accused of breaking school rules have a disciplinary hearing?

Problem Solving

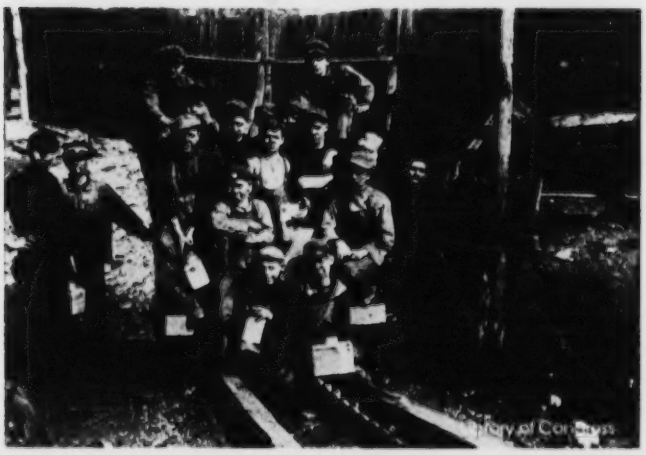
Can you identify examples of the three types of issues of justice?

Divide into small groups to complete this exercise. Read each of the following items. Then identify whether each situation might raise an issue of distributive, corrective, or procedural justice.

Afterward, share and compare your answers with the rest of the class. Then discuss your answers to the "What do you think?" questions which follow.

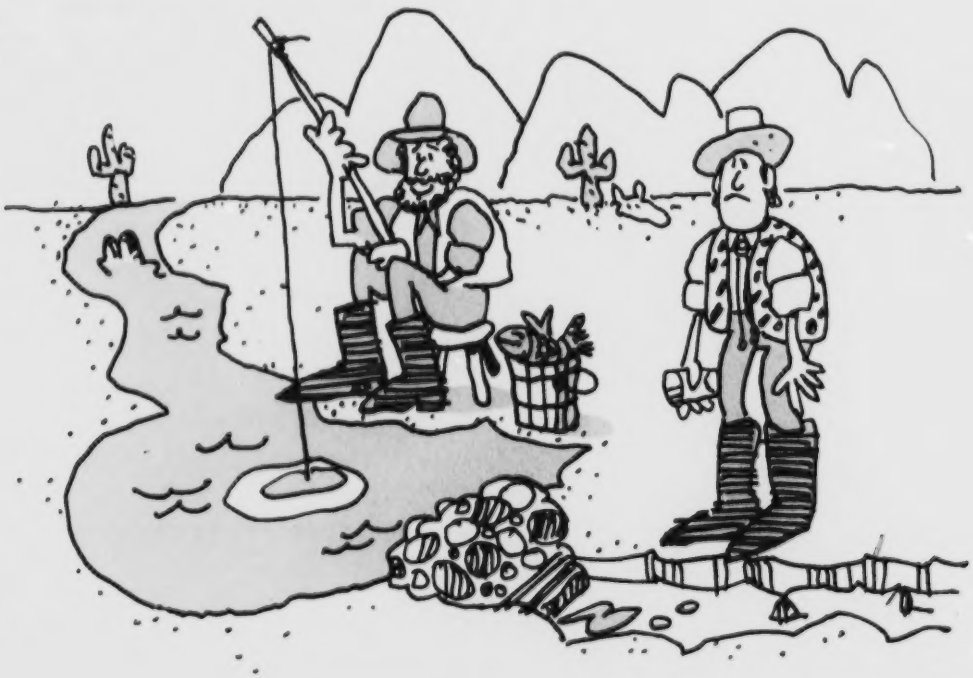
1. Police departments usually hire only those people who meet certain physical qualifications and who have successfully completed a high school education.

2. To qualify for a driver's license, you must have an adequate knowledge of traffic laws, have good driving skills, and be a certain age.
3. In some cities, the penalty for parking in designated areas beyond a certain time is a fine of $5.
4. In a recent court case, a man sued a driver whose car ran into his car for $5,000 in damages to his automobile, $4,300 in medical bills, and $1,000 for inconveniences caused by the accident.
5. In the 1880s, thousands of Irish immigrants came to the United States. Often they were denied employment opportunities because they were Irish and Catholic.



6. Tom borrowed his friend's car and dented a fender. He agreed to pay for the repair.
7. During the early part of our nation's history, people convicted of certain crimes were placed in stocks and pillories (wooden frames with holes in which the punished person's head and hands or legs were locked). People were kept this way in the public square for a specified period of time.
8. If you are accused of a crime and cannot afford an attorney, you have the right to be provided a lawyer at public expense.

9. In many states, before a school can use a particular textbook, a state commission must hold public hearings to allow people to present their views on the textbooks being considered.
10. Before hiring someone to fill a vacancy in a government agency, the position must be advertised and all applicants given the opportunity to take a written examination and have an interview.
11. Five boys had been accused of vandalizing a school one weekend. The principal asked if they were guilty. Two boys said they were not—that they had been at the homes of friends at the time of the incident. The principal called their friends and parents to verify their stories.
12. Before the Southwest became part of the United States in 1848, it was governed by Mexican law, based on the Spanish legal system. All rivers, creeks, and streams were public. According to United States laws based on the British legal system, however, water belonged to the person on whose land the water source began.

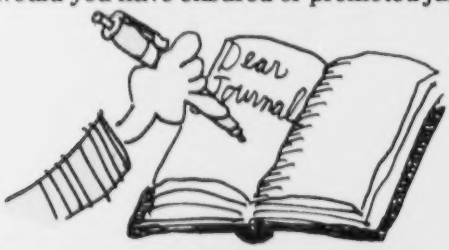


What do you think?

1. What do you think is fair or unfair about each of the situations on pages 7-9?
2. What did you take into consideration in deciding what was fair or unfair about each situation?
3. Were the things you took into consideration in each situation similar or different?

Using the Lesson

1. While working in this program, keep a notebook or journal. To begin, write an entry about a situation you have experienced or observed which has raised an issue of justice. Under which of the three categories of justice did the situation fall? If you had the power to resolve the situation, how would you have ensured or promoted justice?



2. Imagine you are Jean Valjean. You have just been convicted of stealing bread to feed your starving sister and her family. The judge asks if you have anything to say before you are sentenced. What statement would you make in your defense?
3. Start a clipping project. Work with a study partner to select a current topic in your community which raises an issue of justice. Collect articles, editorials, letters to the editor, headlines, photos, and cartoons from local newspapers and magazines about the issue. Store the clippings in a notebook or looseleaf binder. Your teacher will give you further instructions about what to do with your clipping collection as you continue to work in this program.

Lesson 2

How Do Our Nation's Founding Documents Promote Justice?

The Founders of our nation were dedicated to the ideal of justice. In this lesson, you will have a chance to look at excerpts from the two most important founding documents of the United States—the Declaration of Independence and the Constitution—from the viewpoint of justice.

> *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*
>
> *Preamble to the Constitution*

Problem Solving

Divide into four groups. Each group will be assigned excerpts from the Declaration of Independence and the Constitution. Work with your group to decide whether the excerpts deal with issues of distributive, corrective, or procedural justice. (Some may deal with more than one type of justice.) A group secretary should be chosen to record your analysis on the worksheet which follows.

Afterward, select a group spokesperson to present your findings to the rest of the class. Do your classmates agree with your group's analysis?

QUOTATION WORKSHEET

GROUP _____

Write the number of each excerpt under the category into which it falls. Some excerpts might fall into more than one category.

Distributive	Corrective	Procedural
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Caption comments: _____

GROUP A

EXCERPT 1: FROM THE DECLARATION OF INDEPENDENCE (1776)

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—

EXCERPT 2: AMENDMENT I (BILL OF RIGHTS, 1791)

....No State shall...deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

EXCERPT 3: AMENDMENT VIII (BILL OF RIGHTS, 1791)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Even after the Bill of Rights was adopted, some states still punished convicted criminals by whipping. If a law was passed today that reinstated whipping as a punishment in your state, do you think such a law would be held constitutional? Would the law promote or deny distributive, corrective, or procedural justice?

EXCERPT 4: ARTICLE III, SECTION 2, CLAUSE 3

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

GROUP B

EXCERPT 1: AMENDMENT XIV, SECTION 1 (1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Would a law establishing ethnic quotas about who is allowed to immigrate to the United States raise issues of distributive, corrective, or procedural justice?

EXCERPT 2: ARTICLE I, SECTION 9, CLAUSE 3

No bill of attainder or ex post facto law shall be passed.

EXCERPT 3: AMENDMENT VII (BILL OF RIGHTS, 1791)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

EXCERPT 4: AMENDMENT IV (BILL OF RIGHTS, 1791)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

GROUP C

EXCERPT 1: AMENDMENT XXVI, SECTION 1 (1971)

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

EXCERPT 2: ARTICLE I, SECTION 9, CLAUSE 2

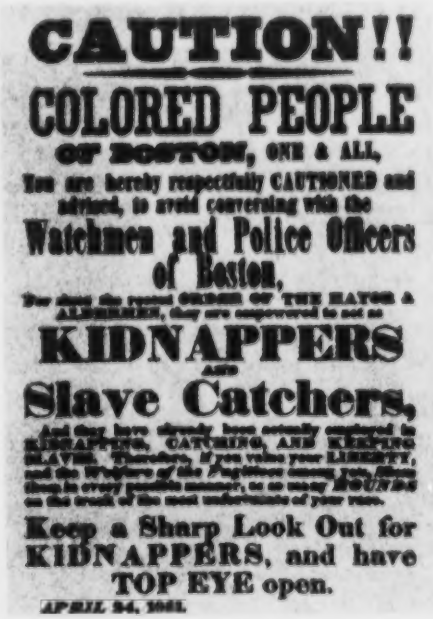
The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

EXCERPT 3: AMENDMENT V (BILL OF RIGHTS, 1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law....

EXCERPT 4: AMENDMENT XV, SECTION 1 (1870)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.


CAUTION!!

COLORED PEOPLE

OF BOSTON, ONE & ALL,

You are hereby respectfully CAUTIONED and advised, to avoid conversing with the

Watchmen and Police Officers of Boston,

For since the recent ORDER OF THE MAYOR & ALDERMEN, they are empowered to act as

KIDNAPPERS AND Slave Catchers,

And they have already been actively employed in KIDNAPPING, CATCHING, AND KEEPING SLAVES. Therefore, if you value your LIBERTY, and the Welfare of the Fugitives among you, [illegible] them in every possible manner, as so many HOUNDS on the track of the most unfortunate of your race.

Keep a Sharp Look Out for KIDNAPPERS, and have TOP EYE open.

APRIL 24, 1851.

What types of issues of justice does this poster raise?

GROUP D

EXCERPT 1: AMENDMENT VI (BILL OF RIGHTS, 1791)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,—and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

EXCERPT 2: AMENDMENT XIII, SECTION 1 (1865)

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

EXCERPT 3: AMENDMENT XXIV, SECTION 1 (1964)

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

EXCERPT 4: AMENDMENT XIX, SECTION 1 (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Was slavery a denial of distributive, corrective, or procedural justice?

Using the Lesson

1. Read the list of grievances listed in the Declaration of Independence. Find examples of the denial of distributive justice, corrective justice, and procedural justice. Then imagine that you are King George III. Write a letter in your program journal to Thomas Jefferson. Explain why, in your royal opinion, you feel completely justified in behaving as you did toward the colonists.
2. Create a poster or thirty-second TV ad or radio spot explaining to the general public why understanding the Constitution is one important way we can help eliminate injustice in our society.
3. Prior to 1971, an eighteen-year-old male could be drafted to fight in a war although he was not considered mature enough to vote. Do you think this was just? Does it raise an issue of distributive, corrective, or procedural justice? Write an editorial expressing your opinion.
4. Imagine you are one of the factory workers pictured below. Create a slogan for your picket sign to highlight the fact that you are being denied distributive, corrective, or procedural justice.

Brown Brothers

Unit 2

What Is Distributive Justice?

In Unit One, you learned to identify the three categories into which issues of justice fall. Now you will have a chance to look at each category more closely.

In early Northwest Coast Native American culture, a person gained respect and prestige by distributing gifts of food and clothing to other members of the tribe at potlatches or ceremonial feasts. When Anglo-Americans came to the Northwest, they outlawed potlatches, saying they were wasteful and extravagant. Many Native Americans continued to practice this tradition secretly, however, and today potlatches are seeing a revival. What might be some of the benefits of the potlatch tradition in terms of distributive justice? What might be some of the burdens?

This unit focuses on issues of distributive justice—how fairly benefits and burdens are distributed in a society. You will discover that it is useful to ask certain questions and consider certain ideas in order to make informed decisions about what is fair.

Lesson 3

How Can Intellectual Tools Be Used to Analyze Issues of Distributive Justice?

Have you ever had to choose members for a team? Or decide who would be admitted to a club? Or who should contribute to a common fund for a party or celebration?

In choosing members for a team, what, if anything, should be considered in addition to a person's ability to play the game well?

If you have, you've been dealing with questions of distributive justice. Examples of issues of distributive justice include questions about the distribution of grades, salaries, jobs, educational opportunities, political rights, and taxes.

What do you think?

1. Choose one of the questions posed below and explain your position on the issue.
2. Identify a current issue of distributive justice in your school, local community, state, or nation. In your opinion, what would be a fair solution to the problem and why?

Making a fair decision about issues of distributive justice is not always easy.

- Should all people be given the same educational opportunities at public expense, or should some people be given greater assistance and opportunities than others?
- Should all people have to pay the same amount of taxes, or should some be required to pay more than others? If some should be required to pay more, how much more and why?
- Should the wealth of developed nations be used to assist developing nations?

Tools of the Trade

As you can see, it is not always easy to decide what is fair or just. Fortunately, there are some intellectual tools—tools of the mind—that can help you.

Intellectual tools are ideas and sets of questions you can use to examine and make decisions about personal problems or the problems of society.

If you wanted to repair an automobile, you wouldn't use the same tools you would need to repair a torn piece of clothing or bake a cake. Different problems or tasks require using different tools. Each type of issue of justice—distributive, corrective, or procedural—requires a different set of intellectual tools.

In this unit, you will learn to use a number of intellectual tools to help you analyze and reach decisions about issues of distributive justice.

The Principle of Similarity

The principle of similarity is the first intellectual tool you can use to help you analyze issues of distributive justice. Stated briefly, this principle means that in a particular situation:

- people who are similar in certain important ways should be treated alike, and
- people who are different in certain important ways should be treated differently.

When examining issues of distributive justice, you can compare similarities and differences among individuals or groups in three ways: in terms of need, capacity (ability), and desert (how deserving someone or some group is).

All three ways may not apply in every situation. Sometimes it is also necessary to decide which consideration is most important in a particular case.

Have you ever heard the expression, "You can't compare apples and oranges."? How does it apply to the principle of similarity?

The Three Considerations

CONSIDERATIONS OF NEED, CAPACITY, AND DESERT		
Need	**Capacity**	**Desert**
To what degree are the persons being considered similar or different in terms of their **need** for whatever is being distributed?	To what degree are the persons being considered similar or different in terms of their **capacity** to use a benefit or bear a burden?	To what degree are the persons being considered similar or different in terms of their **deserving** whatever is being distributed?
Types of needs include physiological needs such as sleep; psychological needs such as affection; and economic needs such as a job.	Types of capacities include physical, such as whether a person is in good health; psychological, such as whether a person is self-confident; and intellectual, such as whether a person is creative.	Questions of desert include whether one deserves a **benefit**, such as a raise because of hard work or the right to vote as a citizen; or whether one deserves a **burden**, such as a fine for breaking the law or the duty to pay taxes as a property owner.

Problem Solving

Distributive Justice: How would you decide?

The examples on the next page raise issues of distributive justice. Decide what you think would be fair in each situation. Work with a partner to answer the questions on page 26. Then share your answers with the class.

1. Suppose four adults and one child are stranded on a desert island. There is a limited amount of water. Two adults are ill. One of the other adults is a doctor. Another is eight months pregnant. Children are especially susceptible to dehydration. Would it be fair to give each person the same amount of water?

2. Suppose that four students in a classroom did outstanding work all semester, four students did average work, and four students did poor work. One of the students whose grades were poor had put in much extra time and effort and showed improvement. Another student who had done poor work was an important member of the varsity team and had to have an average grade to remain on the team. Still another student, who managed to do well on tests, never worked hard and was capable of doing even better. How should grades be distributed? Which students should be given which grades and why?

3. Cheerleading tryouts are being held at Ra Ra High. There are only three openings on the varsity cheerleading team, which currently is composed only of female students. Five students have signed up for the tryouts—three girls and two boys. Two of the girls and one of the boys have very good acrobatic skills. One boy and one girl have only mediocre athletic ability. Who should be chosen for the team and why?

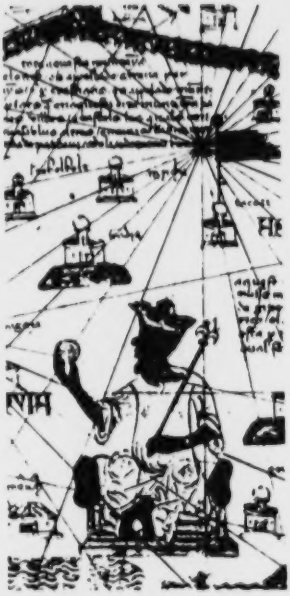
What do you think?

1. Which examples raised questions of similarities and differences in terms of need, capacity, or desert?
2. Discuss how you would make a fair decision in each situation. What considerations should be taken into account in each case?
3. On the basis of your discussion, can you suggest any guidelines to help others make just decisions in similar cases?

Using the Lesson

1. Imagine you work for a business firm. You want a raise! Have a partner play the role of your boss. Tell your boss why you think you deserve a raise on the basis of your needs, capacities, and deserts. What does your boss say in return and why?
2. Read news clippings and critics' essays about the last Grammy, Academy, or Country Music Awards. Which considerations do you think are most relevant in determining who should get these awards? In your opinion, did the best people win for the "right" reasons? Write a "Critics Corner" essay in your program notebook, analyzing the awards in terms of the principle of similarity, and the considerations of need, capacity, and desert.

3. Mansa Musa, who ruled Mali during the 14th century, brought scholars from all over Africa to his kingdom to assist in developing the ideals and intellectual tools that would help him rule with justice. If you had been one of the scholars and could only make one suggestion, what would you have advised Mansa Musa to do and why?

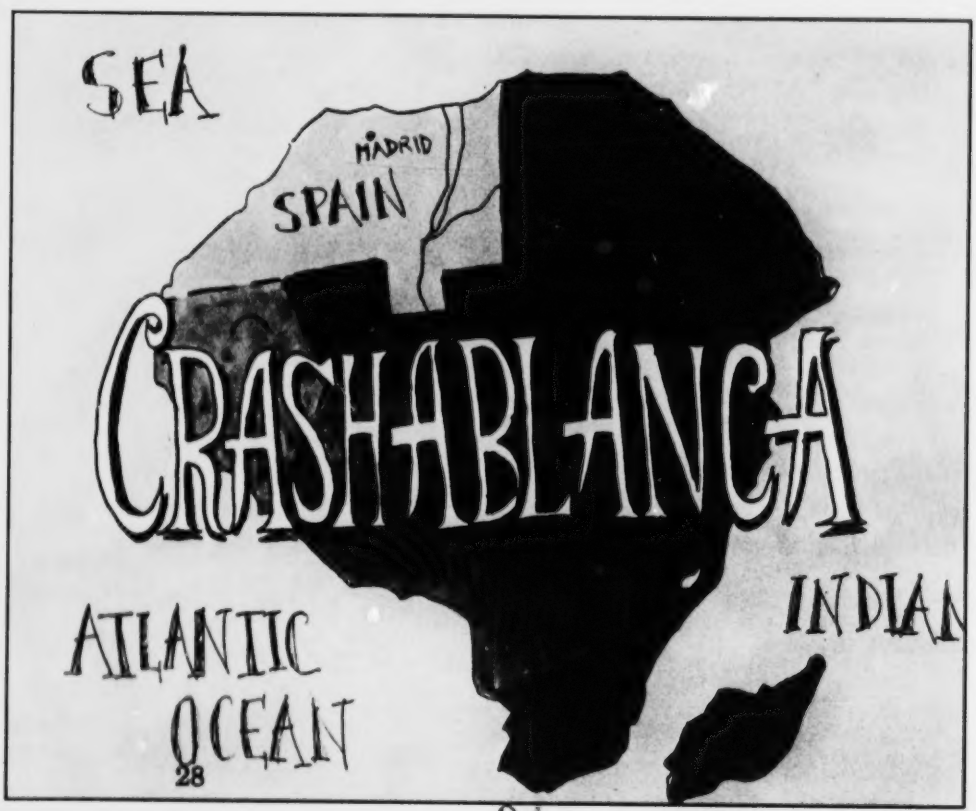


4. Work with a group of students to identify times when issues of distributive justice were raised in our history, for example, during the Great Depression or during the Civil Rights Movement. Who were the men and women who championed the cause of distributive justice? Share what you learn by creating a bulletin board entitled "Distributive Justice: An American Timeline."

Lesson 4

A Problem of Distributive Justice: Who Should Get the Airline Pass?

In the last lesson, you learned about the principle of similarity and the special considerations of need, capacity, and desert. In this lesson, you will have a chance to apply these intellectual tools to arrive at a fair and just decision in the situation posed on the following pages.

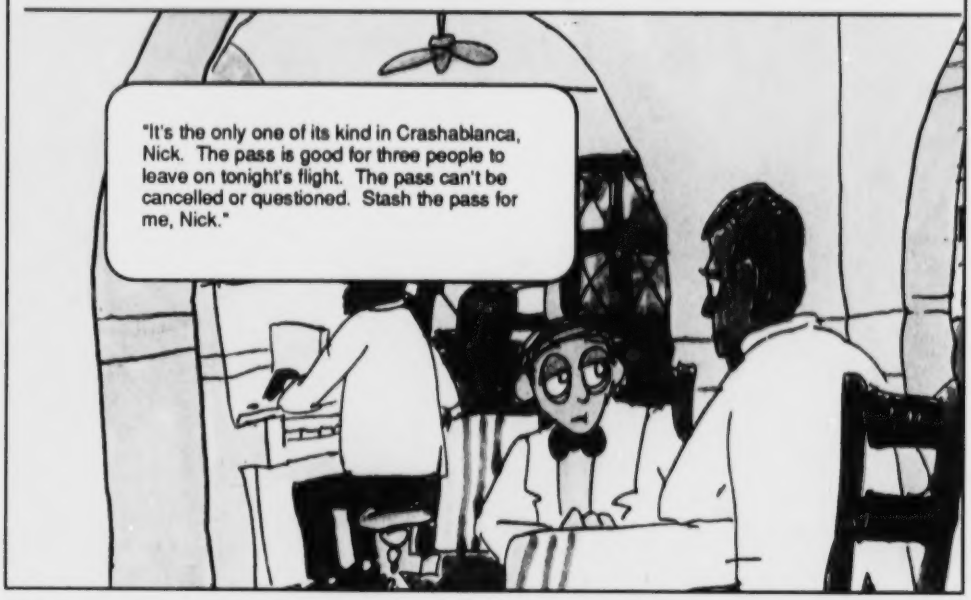


Of all the places in this big world of ours, almost none is as dreary, isolated, and difficult to escape from as Crashablanca. If you're lucky, you might somehow come up with an airplane ticket to get as far away as possible from this desert disaster. You just can't get away without one. There are no roads or rivers in or out. And the camels have been on strike for over two years. Even by air, escape isn't easy. Only one flight leaves each month, and flights are booked for years in advance.

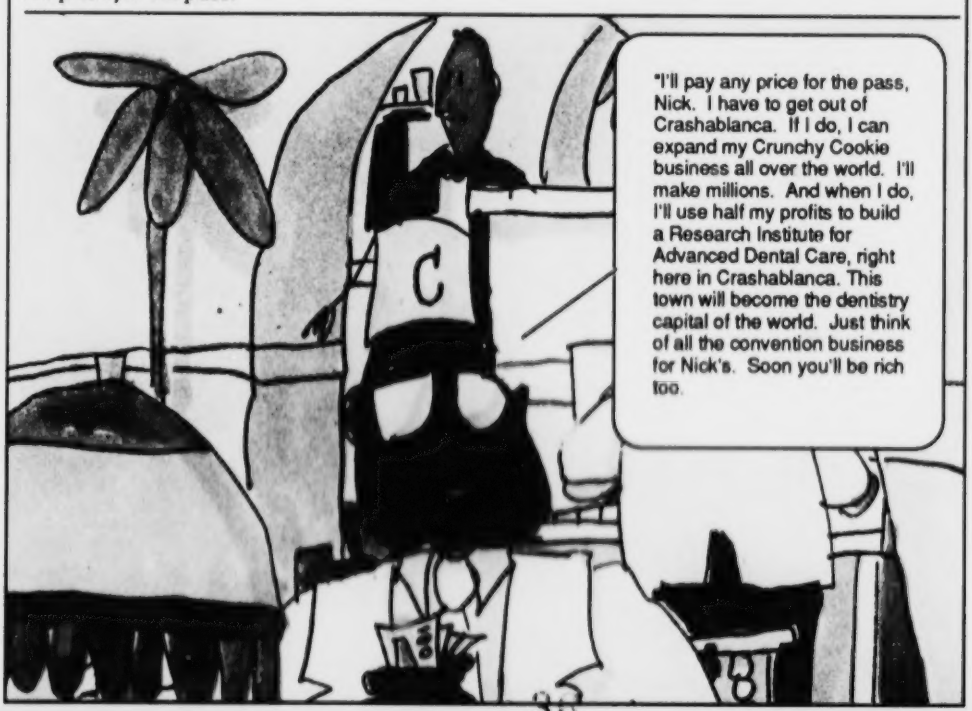
So what does everyone do while they wait? They come to Nick's.

Personally, I never cared for the place. It's got absolutely no atmosphere—no class. And it serves atrocious food. I ought to know. I'm Nick.
29

One afternoon I was sitting at my private table deciding whether to have a little soup or a little nap, when I was interrupted by a little turkey who goes by the name of Lorry. In his wheezy, rasping voice, he told me he had got hold of a special airline pass. I agreed to keep the pass for him safely in my safe. But as it turns out, he didn't need to use it after all. Apparently, when Lorry left here he crossed the street without looking both ways and was hit by his namesake. Now he doesn't have to worry about getting out of Crashablanca anymore. He's already out. Far, far out.


"It's the only one of its kind in Crashablanca, Nick. The pass is good for three people to leave on tonight's flight. The pass can't be cancelled or questioned. Stash the pass for me, Nick."

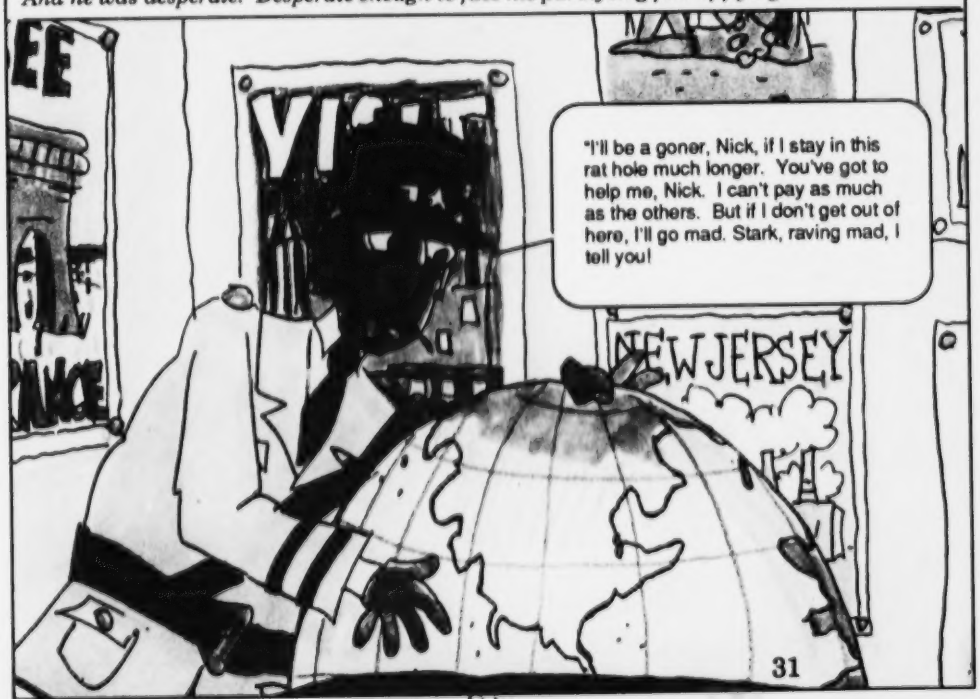
Lorry had said that everyone would want the pass, and he was right. Soon my private table was about as private as Grand Central Station. First this big guy, Clyde, strolled up to make his pitch for the pass.


"I'll pay any price for the pass, Nick. I have to get out of Crashablanca. If I do, I can expand my Crunchy Cookie business all over the world. I'll make millions. And when I do, I'll use half my profits to build a Research Institute for Advanced Dental Care, right here in Crashablanca. This town will become the dentistry capital of the world. Just think of all the convention business for Nick's. Soon you'll be rich too.

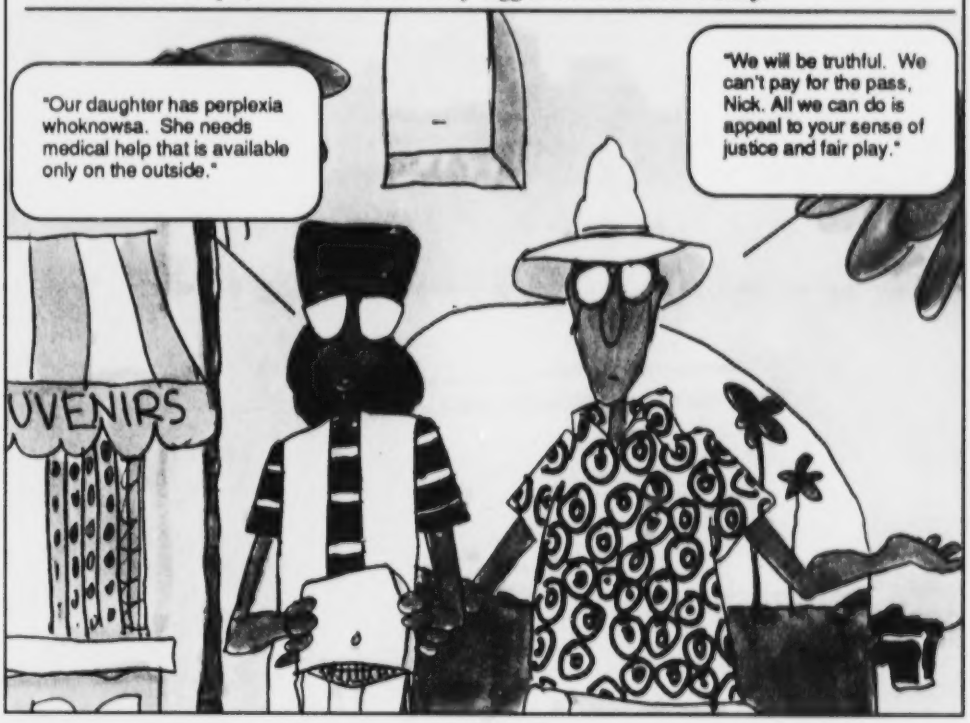
Next it was my old girlfriend Elsie. I hadn't seen her for a long time. She and her husband, Lazlo Lazlo, the prize-winning journalist with two last names, were in Crashablanca. As much as she still loved me, Elsie needed the pass to get her husband out of Crashablanca so that he could continue his important work saving the planet from extinction.

"Nick, I beg you. The fate of the world depends on it. For his sake, for all our sakes, I'll pay any price. I'll even ride on an airplane, which you know makes me nauseous. Oh, please help me, Nick. If not for the good of humanity, then do it for old time's sake. We might not have much now, Nick. But we'll always have Newark."

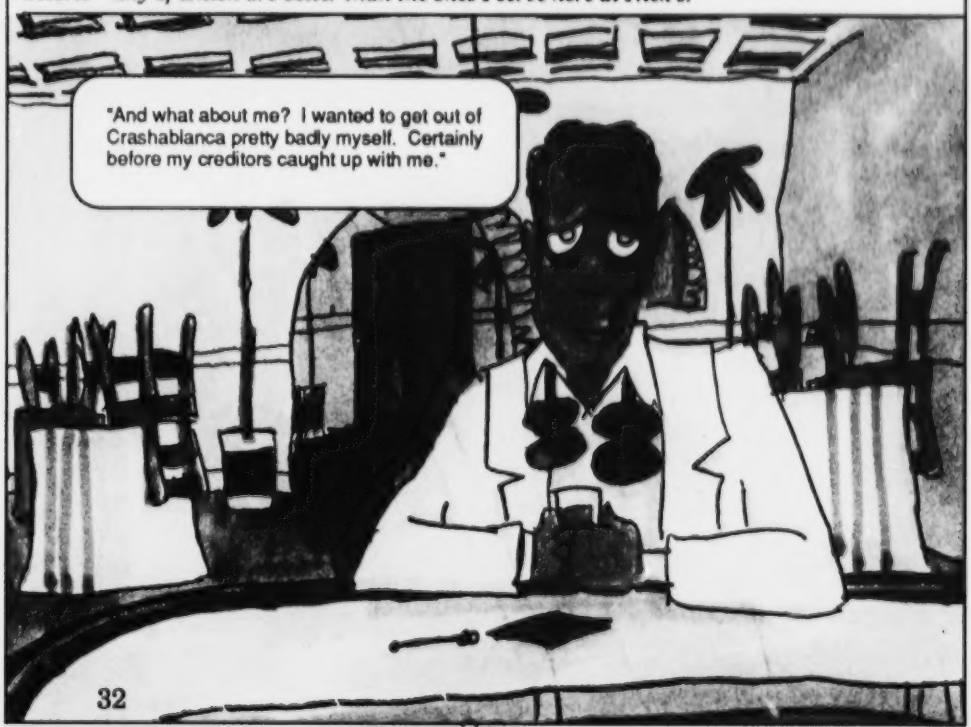
As Elsie eased out the door, she passed Captain Maurice, a top-ranking police official and one of my best customers. He was suffering from a case of Crashablanca fever—extreme boredom. And he was desperate. Desperate enough to face his paralyzing fear of flying.


"I'll be a goner, Nick, if I stay in this rat hole much longer. You've got to help me, Nick. I can't pay as much as the others. But if I don't get out of here, I'll go mad. Stark, raving mad, I tell you!
NEW JERSEY
31

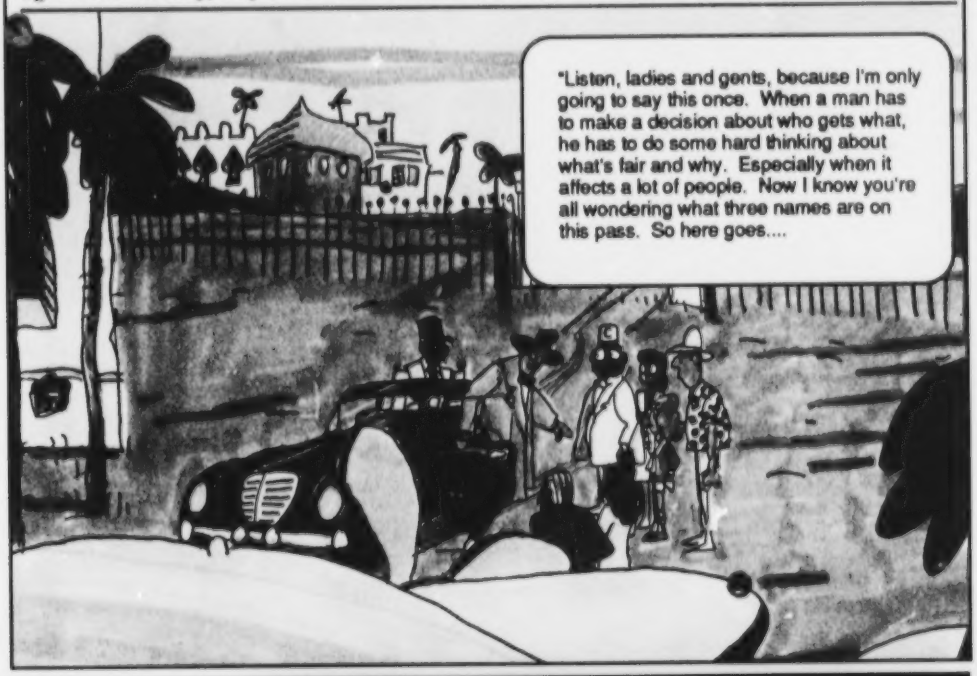
I decided to walk to the Brown Buzzard Cafe to think. Just then, I was stopped by a Crashablancan couple, the Bumchecks. They begged me to hear their story.


"Our daughter has perplexia whoknowsa. She needs medical help that is available only on the outside."
"We will be truthful. We can't pay for the pass, Nick. All we can do is appeal to your sense of justice and fair play."
UVENIRS

I didn't know what to do. So many people with so many needs—not to mention capacities and deserts—any of which are better than the ones I serve here at Nick's.


"And what about me? I wanted to get out of Crashablanca pretty badly myself. Certainly before my creditors caught up with me."

But as my dearly departed mother always used to say, "A man's gotta do what a man's gotta do." And what I did was tell everyone to meet me at the airport. Then I grabbed the pass and headed for the tarmac. The plane was leaving in one hour. There was no time to lose. When I got to the runway, they were all there. Then I let them in on my decision.


"Listen, ladies and gents, because I'm only going to say this once. When a man has to make a decision about who gets what, he has to do some hard thinking about what's fair and why. Especially when it affects a lot of people. Now I know you're all wondering what three names are on this pass. So here goes....

Problem Solving

If the shoe fits...

Imagine that you are in Nick's shoes. To make a fair decision about who should get the airline pass, apply the intellectual tools you have learned to examine the alternatives.

What similarities and differences exist among the people who want the airline pass in terms of their needs, capacities, and deserts? Which similarities and differences should Nick consider?

To help you make a fair decision, complete the chart on the next page. Then answer the questions below.

What do you think?

1. Share and discuss your chart with your classmates. Did anyone raise any points you had not considered?
2. After considering the similarities and differences among the contenders for the airline pass, take a class vote. Which three people do you think should receive the airline pass? Why?
3. How have you used the principle of similarity and the considerations of need, capacity, and desert in making your decision?

CRASHABLANCA CHART			
Character	Need	Capacity	Desert
Clyde			
Elsie			
Lazlo			
Maurice			
Mr. Bumcheck			
Mrs. Bumcheck			
Ms. Bumcheck			
Nick			

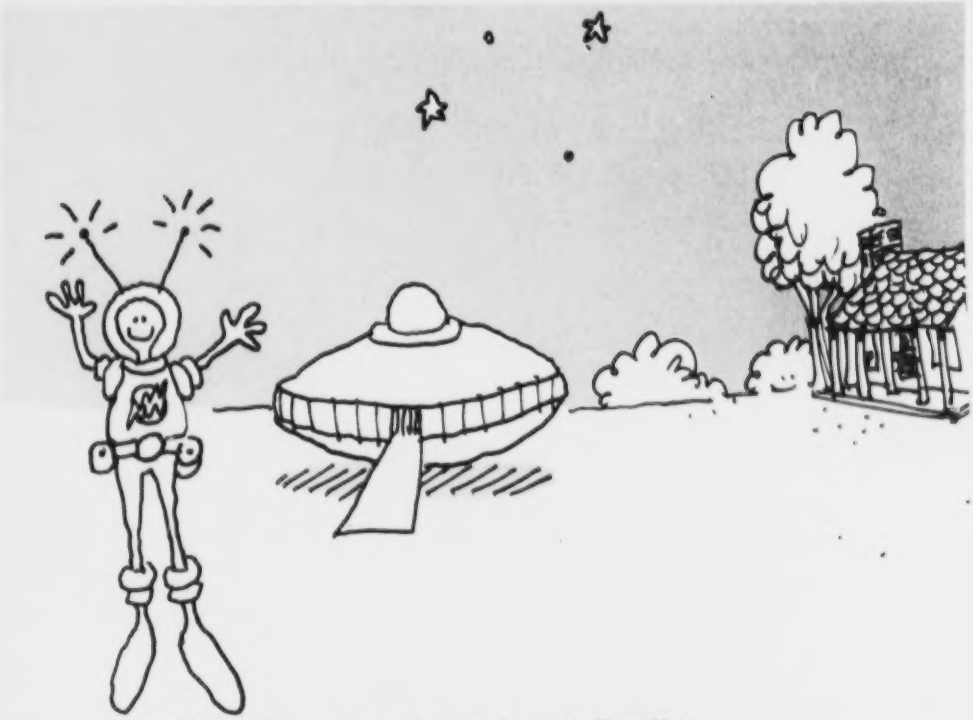
Using the Lesson

1. Imagine you are one of the characters in Crashablanca who did not receive the airline pass. Write a letter to Nick in your program notebook explaining why you should have been awarded the pass. State your case in terms of one or more of the considerations of need, capacity, and desert.
2. Design a movie poster for Crashablanca to highlight the issue of distributive justice raised in the plot.

3. Write a title and the dialogue for a TV movie or radio show based on the situation described on page 37. Highlight the needs, capacities, and deserts of the characters in order to lead your audience to reach a just solution to the crisis. Later, you may wish to work with classmates to dramatize the scene and record it for posterity on video or audio tape.

Time: The 13th hour, Stardate 3060

Place: A Thromboid resistance hideout in the Fifth Crater of the Fourth Moon of the planet Zarcon.



Situation: There are only four interstellar dietary supplements and one flask of desensitizing Gorkian juice to distribute among nine Thromboids and one Tellnar ally. Three of the group have not eaten for a week. Six have eaten regularly, but have just returned from a tough starship mission and will be going out to fight the Enemy again tomorrow. One member of the group is critically wounded and is not expected to last through the night. She is in great pain. One Thromboid is the highly respected leader of the group. The Tellnar is very skilled in sensing the approach of the Enemy due to his psychic abilities. However, some of the Thromboids suspect that the Tellnar is a double agent.

Lesson 5

What Other Values and Interests Should Be Considered When Dealing With Issues of Distributive Justice?

You have had a chance to decide what would be just or fair using the principle of similarity and the considerations of need, capacity, and desert. However, it may also be important to take other values and interests into account when deciding about an issue of distributive justice. Doing so might result in a decision different from that reached if you considered only need, capacity, and desert.

For example, suppose a computer error was discovered in determining annual property taxes in a community. As a result, many property owners had been overcharged one dollar each on their taxes ten years ago.

What do you think?

1. What response to the problem would you make if you just considered need, capacity, and desert?
2. What might be the consequences of such a response?
3. What other important interests and values might be considered in this case?
4. What, if anything, should the local government do about the situation? Why?

Problem Solving

In the News

Read the following news story about a high school awards program. Afterward, work with a study partner to make a list of suggestions for improving the fairness of school award policies. Be sure to use the intellectual tools you have learned and take into account other values and interests you think are relevant. To help you, work together to answer the questions which follow the news story.

Central High School Courier

Few Surprises at Central's Award Ceremony

Last night's award assembly at Central High School held few surprises for those who have attended the annual event in the past. The awards assembly is a traditional occasion designed to recognize those students who have made outstanding achievements during the year.

As usual, first on the program were the service awards, given on the basis of hours contributed to school service: 600 hours equaled a gold medal, 500 hours a silver medal, 150 hours a bronze medal. In addition, special contributions were recognized. Luke Warm was honored for his work with audiovisual equipment and for his service as stage manager. Next, Ima Tardy received recognition for having missed only one day of school in four years.

Academic awards followed. Students were presented medals of recognition for their work in the major academic fields. Announcements were made of seniors who had earned the most As. When it was announced that Mabel Syrup had never received less than an A in any subject since the ninth grade, the audience let out a unanimous shout of surprise.

But it was no surprise when she received the four-year "Latin scholarship." Classmates of this senior knew that she would most likely also stand up to receive the "Best Student" award, which is exactly what happened.

Mabel Syrup never less than A since ninth grade!

It seems that every year it is the student body president who is chosen as "Most Likely to Succeed." This year was no exception, as Mac N. Tosh won this accolade.

Next, the winners of various academic contests were announced. State scholarship recipients and National Merit finalists were named.

Athletic awards followed—best sophomore team soccer player Hedda Steam, best junior varsity soccer player Pete Boggs, best varsity soccer player Manuel Dexterity. Then, each member of the football team was introduced individually to receive his letter on stage from Coach Al Fresco.

Of course, the major event was the announcement of "Athlete of the Year." When Ben Press received the award, shouting, whistling, clapping, and yelling continued for several minutes. Ben had starred in three sports and served as team captain in all of them.

Then the senior class awards were given—"Brainiest" to Monty Zooma; "Wittiest" to D. Gustibus; "Best Sense of Humor" to Barb Wire; "Most Handsome" to Art Nouveau, and "Best Smile" to Pearl White.

As each winner's name was called, cheerleader captain Polly Styrene led the student body in a rousing "Hip, hip, hooray!"

The final award was the presentation of the senior class gift. Class president Frank N. Stein presented a new podium with a brass plaque to school principal, Mason Jarr. It was a solemn moment.

Finally, all stood for the singing of the school song, "You'll Always Be Central In My Heart." The evening ended with shouts, cheers, clapping, and the rapid scuffling of feet.

What do you think?

1. Make a list of the awards given at the assembly.
2. For which achievements were the greatest number of awards given? The least?
3. What were the similarities and differences among the various awards in terms of the recipients' needs, capacities, and deserts?
4. What other values and interests appear to be reflected in the distribution of awards?
5. If you felt the distribution was unfair, what changes would you suggest and why?
6. What values and interests underlie your suggestions?

A Question of Discrimination

Obviously, the story about Central High School was fictitious. However, actual situations involving issues of distributive justice have been argued in our state and federal courts on many occasions.

The case that is summarized on the following pages arose before Congress passed the Civil Rights Act of 1964. That act, and other federal laws and court decisions since then, now prohibit racial discrimination in public accommodations and employment.

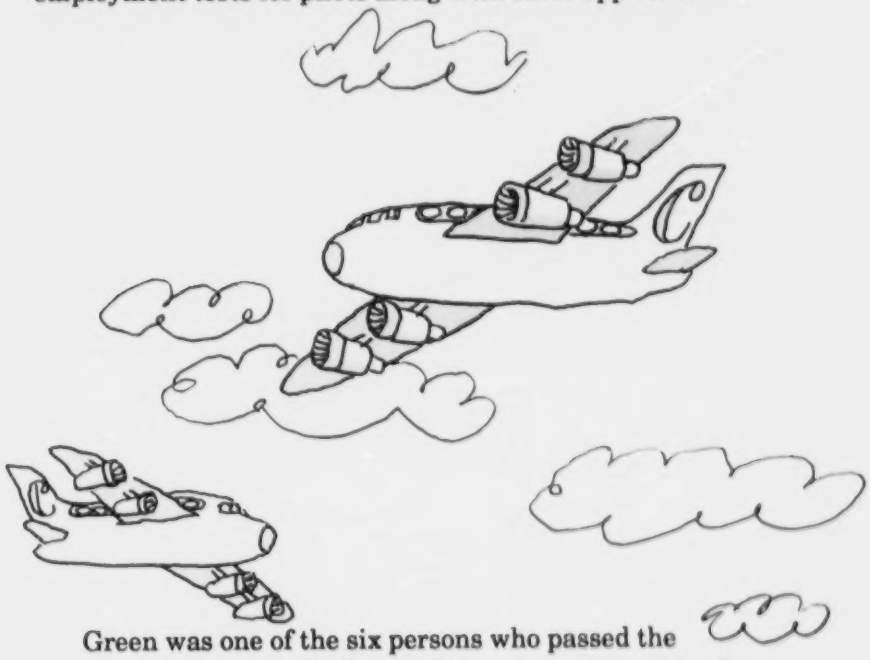
Read the case and then work with a study partner to complete the accompanying chart and answer the "What do you think?" questions that follow. Then share and discuss your answers with the rest of the class.

Problem Solving

Colorado Anti-Discrimination Commission v. Continental Airlines

Marlon D. Green, an African American, had served as a pilot in the United States Air Force for several years. In 1957, when he was about to leave the service, he wrote to several airline companies, including Continental Airlines, seeking employment as a pilot.

An executive of Continental Airlines told Green to fill out an employment application. His application was accepted and he was allowed to take Continental's employment tests for pilots along with other applicants.



Green was one of the six persons who passed the employment test. He had more flying experience than the other five qualified applicants, who were all white. Yet Green was not hired. He was put on the waiting list, while the other five applicants were hired to enter the pilots' training program immediately. In the next two months, seventeen more white men were accepted into the training program. Green was still on the waiting list.

At this point, Green filed a complaint with the Colorado Anti-Discrimination Commission. At the hearing held by the Commission, Green argued that Continental Airlines had refused to hire him solely because of his race. He argued that the airline had violated the Colorado Anti-Discrimination Act of 1957. That act provided that it was unfair for any employer to refuse to hire any qualified applicant because of that person's race, creed, color, national origin, or ancestry.

Continental Airlines officials argued that the hiring of Green would cause great problems. His presence in the cockpit of an airplane might create arguments, which could be a safety hazard. They also said they would have a problem housing and feeding an African American pilot because of racial discrimination in some cities. Furthermore, the company was afraid that the pilots' union would reject Green. This rejection would cause labor problems for the company. Therefore, they argued that the airline company could legitimately refuse to hire Marlon Green.

The Commission found that Marlon Green was not selected for the training school because of his race, and ordered Continental Airlines to give Green the first opportunity to enroll in its next course.*

*This summary is based on a case that ultimately reached the United States Supreme Court. See *Colorado Anti-Discrimination Commission* v. *Continental Airlines*, 372 U.S. 714 (1963).

DISTRIBUTIVE JUSTICE STUDY CHART

Question	Answer
1. What benefit or burden is being distributed?	
2. What persons are being considered as recipients?	
3. In applying the principle of similarity, ask these questions: a. Need: To what degree are the persons similar or different in terms of their need for what is being distributed?	
b. Capacity: To what degree are the persons similar or different in terms of their capacity to deal with what is being distributed?	
c. Desert: (1) To what degree do the persons being considered deserve a particular benefit?	
(2) To what degree do the persons being considered deserve a particular burden?	
4. What other values or interests should be considered in order to reach a decision?	

What do you think?

Share and discuss your views about this case by answering the following questions:

1. Applying the principle of similarity and considerations of need, capacity, and desert would it have been fair to give Marlon Green the job?
2. What other interests and values did the company argue should be considered in this case?
3. Taking these interests and values into consideration do you think the Commission reached the right decision? Why or why not?

Using the Lesson

1. **Imagine that you are the director of admissions for your state university. One hundred persons have applied for 25 openings in the freshman class. What considerations in terms of need, capacity, and desert should be used to decide who should be admitted? How could you determine to what degree applicants are similar or different in terms of the considerations you believe are important? Make a list of your recommendations to be sent to the Board of Trustees. You may later wish to work with classmates to simulate the trustee meeting at which your suggestions will be discussed.**
2. **Read the news article on the next page and analyze the problem described in it using the intellectual tools introduced in this unit. Then, write a "Letter to the Editor" in your program notebook, stating your opinion about whether the three applicants to the Elks Lodge were treated fairly. If not, what would you recommend be done and why?**

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Los Angeles Times **VALLEY** San Fernando, Santa Clarita, Conejo, Simi and Antelope Valleys

8 Part II/Thursday, September 21, 1989/F

Mayor Urges Robbins to Quit Elks Over Racial Issue

By TRACEY KAPLAN
and AMY PYLE,
Times Staff Writers

Mayor Tom Bradley called Wednesday for state Sen. Alan Robbins (D-Tarzana) to send a "powerful message" against racism by resigning immediately from the Van Nuys Elks Lodge, which voted for the second time Tuesday to reject membership applications from two black men.

But Robbins, who sponsored Jules S. Bagneris III and Thomas J. Montgomery for membership, said he will continue trying to win acceptance for the two men into the white-dominated organization.

"I'm not going to walk away and concede the fight to those who would treat Mr. Bagneris and Mr. Montgomery unfairly," Robbins said.

Rejected along with Bagneris and Montgomery on Tuesday was Robbins aide, Jack Sheffield, who is white.

> "I'm not going to walk away and concede the fight to those who would treat Mr. Bagneris and Mr. Montgomery unfairly."
>
> **State Sen. Alan Robbins**

Robbins said he and several other lodge members are looking for a loophole in the Elks' bylaws, which prohibit applicants who have been rejected twice from reapplying to the fraternal organization for six months.

Elks officials, however, said it is against their rules to reconsider membership applications before the six-month period elapses.

Bagneris and Montgomery were first rejected last week when only 35 of the lodge's 370 members voted. The lodge does not reveal the results of its membership votes, but sources involved in the election said Tuesday's election drew 53 members, who voted 34-19 to admit the men, just two votes short of the two-thirds necessary for admission.

Bradley was out of town and could not be reached for comment Wednesday, a Spokeswoman said. But in a letter to Robbins on City Hall stationery, the mayor thanked Robbins for his efforts to secure membership for Bagneris and Montgomery and said: "It seems to me your only moral alternative is to submit your resignation . . . Resignation by you and others in the Lodge who abhor discriminatory practices is the most powerful message you can send."

Support for Robbins

But Bagneris, 29, a Lake View Terrace resident and minister at a church in El Centro, said he does not want Robbins to resign. He hopes to eventually gain admission to the lodge through the efforts of Robbins and other members, Bagneris said. Montgomery, 67, a retired state motor vehicles examiner living in Pacoima, could not be reached for comment.

"When Mayor Bradley ran in 1969 and lost, he didn't let one defeat cause him to say he wouldn't run again," Bagneris said. "I'm not a quitter. I want to see this through to the end."

The Benevolent and Protective Order of Elks, as the organization is officially known, recently came under fire for its policies toward racial minorities when two black men tried to join the Lompoc lodge earlier this year. The men were finally admitted to the lodge last week after the Elks national membership decided that lodges would admit new members who could garner a two-thirds vote. Previously, it took only three opposing votes for a prospective member to be rejected.

Elks critics said that in the past the "three-vote blackball" system was used to exclude racial minorities.

The Associated Press reported that, in the wake of the Lompoc lodge's acceptance of the two black members, the state attorney general's office is moving to close a civil rights investigation of the issue there.

("We have not made the formal closure yet, but I've talked to the two men who got in and they seem to be satisfied. It is fair to say we are seriously considering closing the case," Deputy Atty. Gen. Louis Verdugo told the AP.

(Verdugo said the state had not decided whether to investigate the Van Nuys lodge, the AP reported.)

The rejection of Bagneris and Montgomery has outraged the black community in Los Angeles, said Theodore M. Shaw, western regional counsel for the NAACP Legal Defense Fund.

"There's a name for what's going on here: racism," Shaw said. "It shouldn't take this organization this much time to reach a point where it can find qualified black individuals."

Jose De Sosa, president of the Valley Branch of the National Assn. for the Advancement of Colored People and the association's state conference president, joined Bradley in calling for Robbins and other lodge members to resign.

"Much more could be done on the outside," De Sosa said. "Resigning would make a significant statement that the Elks lodge has to change and adapt to the new concept of judging individuals on their character, not their color."

Dan Davis, acting exalted ruler of the Van Nuys lodge, said Tuesday after the vote that the lodge should not be considered racist because "the charities we support extend to everyone regardless of who they are or where they come from."

Robert Verte, secretary to the national organization's grand exalted ruler, said the organization gave $5.1 million to about 2,000 high school seniors last year for college scholarships. Elks lodges work through local high schools to find eligible candidates who have demonstrated financial need and scholastic aptitude, he said.

The organization also donated funds to the handicapped, to veterans and has a drug awareness education program for elementary school students, he said.

Unit 2

Concluding Activity

In 1987 at the ceremony in Philadelphia to inaugurate the celebration of the Bicentennial of the United States Constitution, delegates representing the thirteen original states proposed and debated possible constitutional amendments. One of these amendments would guarantee all adult Americans a job, in order to assure a minimum standard of living to all citizens.

If you had been one of the delegates, would you have voted in favor of this proposed amendment? Make a list of the arguments for and against the amendment, using the intellectual tools you have learned in Unit Two. Be sure to consider relevant values and interests for both individuals and the society at large, including economic implications.

Afterward, work with classmates to sponsor a debate on the topic. Divide into two teams. Compare your list with those of your teammates. Work together to prepare your best arguments for the side of the debate to which you have been assigned. Which of the intellectual tools presented in this unit will be most helpful in preparing for the debate? Be sure to anticipate the arguments for the other side. Then select team spokespersons.

Arrange for the debate to be held at an assembly or open house. You may wish to select a promotion committee to invite parents, public officials, and the press, and to make and place posters about the event around your school and community.

To hold the debate, each side should make a five-minute initial presentation, followed by a two-minute rebuttal. Afterward, you may wish to invite public officials to state their position on the proposed amendment.

Finally, ask for a show of hands. If your guests had been delegates in Philadelphia, where would they have stood on the proposal? Does the amendment pass by a two-thirds vote?

Which of the intellectual tools presented in this unit will be most helpful in preparing for the debate?

Unit 3
What Is Corrective Justice?

"If a man destroy the eye of another, they shall destroy his eye."

Hammurabi
about 1750 B.C.

In any society, there are times when people are wronged or injured by others. In some cases, the wrong or injury may be accidental; in other cases, it is intentional.

Since earliest times, human beings have felt that when there has been a wrong or injury, things should be set right again in some way. Ideally, setting things right means restoring things to the way they were before the wrong or injury occurred. Sometimes this is possible, but at other times, it is not. One cannot restore a life, for example.

Since it is not always possible to restore things to the way they were before a wrong or injury occurred, people have developed other ways of responding to wrongs and injuries.

Corrective justice has one principal goal—the fair response to a wrong or injury. But how can we decide whether a response to a wrong or injury is fair or unfair?

British Museum

Hammurabi, who ruled Babylonia about 1750 B.C., created a list or code of 282 laws designed to promote order and justice in his domain. The code was written and publicly displayed on slabs of rock like the one pictured here. In what ways might corrective justice be promoted if citizens have a better knowledge and understanding of the law?

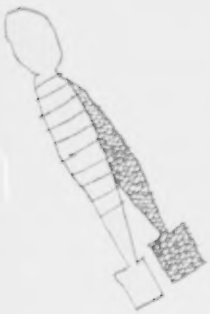
Responses to wrongs and injuries can vary widely. In one situation, an attempt might be made to educate a wrongdoer in order to prevent a repetition of the event. In other cases, a wrongdoer might be fined, imprisoned, or even put to death.

In still other situations, a response to a wrong or injury might not, strictly speaking, satisfy the desire for corrective justice. It may, however, serve other purposes, such as a wish to forgive. For example, if a friend with little money accidentally broke something you owned, you might not want to ask the friend to replace the object or compensate you for the loss. But you might expect an apology.

In this unit, you will have a chance to explore issues of corrective justice. You will also learn to use a new set of intellectual tools to help you determine the best way to respond when a wrong or injury has occurred.

Lesson 6

What Is the First Intellectual Tool Useful in Making Decisions About Issues of Corrective Justice?



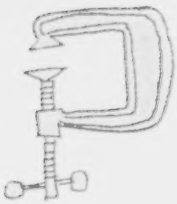
In the last unit, you learned to use a set of intellectual tools to help you analyze issues of distributive justice. Another set of tools or considerations can help you make decisions about issues of corrective justice. When you are trying to decide on an appropriate response to a wrong or injury, look carefully at the situation and apply each general step in the procedure below. Each step will be considered in more detail in this unit.

1. Identify the wrong or injury and the seriousness of its consequences.
2. Identify certain important characteristics of the person or persons who caused the wrong or injury.
3. Identify certain important characteristics of the person or persons who were wronged or injured.
4. Consider common responses to the wrong or injury and their purposes.
5. Consider related values and interests when responding to the wrong or injury.

"Elementary, my dear Watson. I deduce you're using the wrong tool. Try this, old fellow."
"Darn it all, Holmes. I can't see a blessed thing. No fingerprints here. I don't understand it."

Intellectual Tool 1. Identify the wrong or injury and the seriousness of its consequences.

A wrong is a violation of a custom, tradition, rule, law, or moral principle. An injury is damage to or loss of a person's life, liberty, property, or well-being. There can be wrongs without injuries and injuries without wrongs. Sometimes an action can be both wrong and cause an injury.



Quick Quiz

Read the situations described in A, B, and C. In each case, identify whether it illustrates a wrong, an injury, or both. Then answer these questions about the seriousness of the wrong or injury:

1. Extent: How many people or things were affected?
2. Duration: What was the length of time over which the wrong or injury occurred?
3. Impact: How severe was the harm or damage?
4. Offensiveness: How objectionable was the wrong or injury?

A. Curly Lasagna made an illegal left-hand turn in his car from the wrong lane. No accident resulted.

WRONG INJURY BOTH

1. Extent: _____
2. Duration: _____
3. Impact: _____
4. Offensiveness: _____

B. Al Amode carelessly repaired the bicycle before he rented it to a customer. The bicycle fell apart, and the customer fell and broke her leg.

WRONG INJURY BOTH

1. Extent: _____
2. Duration: _____
3. Impact: _____
4. Offensiveness: _____

C. After a violent storm, rocks fell from a hillside, damaging Holly Hock's car parked below.

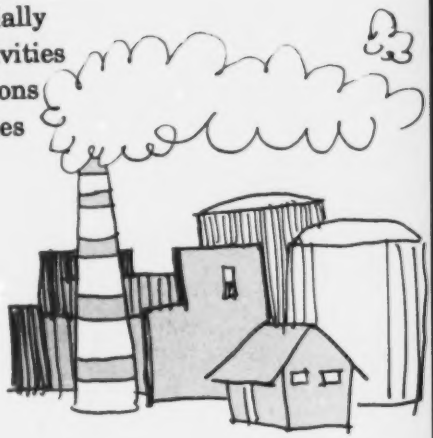
WRONG INJURY BOTH

1. Extent: _____
2. Duration: _____
3. Impact: _____
4. Offensiveness: _____

Problem Solving

Foul Factories

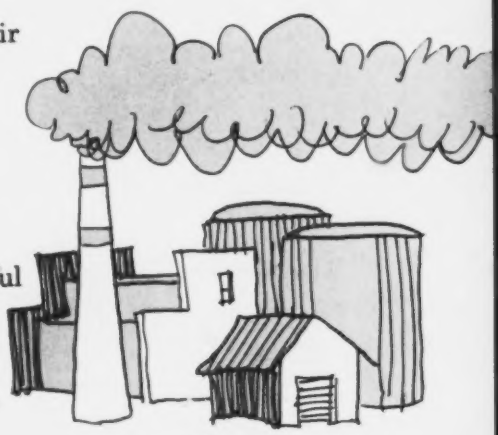
Suppose eight factories have been charged with violating laws dealing with the disposal of potentially harmful wastes. Read the descriptions of the activities of the factories. Then answer the following questions relating to the seriousness of the wrongs or injuries which have occurred in each case.



1. **Extent:** Which factory has caused a more extensive wrong or injury?

   Sulfa, Inc., is located on the outskirts of a city. It discharges air pollutants that have affected about 1,000 people living nearby. Plants and animals have not been noticeably affected.

   Gagme Corporation has polluted the air of a large residential area where about 10,000 people live.



2. **Duration:** Which factory has created a wrong or injury of longer duration?

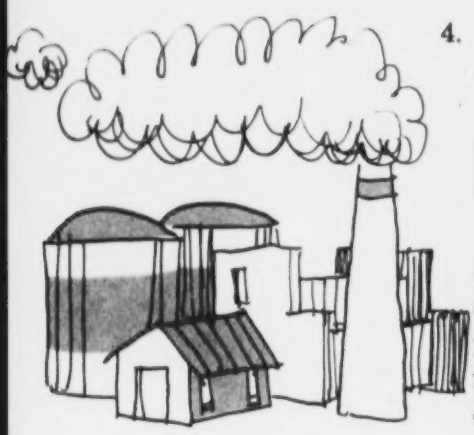
   Smogus, Ltd., has been allowing harmful pollutants to fill the air for five years.

   Ingerees, Inc., has been filling the air with harmful pollutants for two months.

3. **Impact:** Which factory has had the greater impact?

   Croker Chemical releases pollutants that can cause death to infants if the exposure continues for several months.

   P.U. Power releases pollutants that are annoying, but do not threaten life.



4. **Offensiveness:** Which factory has caused the more offensive wrong or injury?

   The Nonuke Company has made efforts to control the pollution caused by its operations.

   Corpse Corporation has refused to do anything to control its emissions, despite several warnings and verified reports of people in the area who have become severely ill. It has relied on its company lawyers to delay for years any court order to correct the problem.

Using the Lesson

1. As you work in this unit, expand your program notebook or journal. To begin, write an entry about a situation in which you or another person had to respond to a wrong or injury. What were the extent, duration, impact, and offensiveness of the wrong or injury? What did you take into consideration in deciding what your response should be? Explain.
2. Work with a small group of classmates to do this activity. Hold a mock government hearing to discuss what should be done about Corpse Corp. Some students should play the roles of the government officials conducting the hearing. Others should testify as concerned citizens and as representatives (public relations and legal) for Corpse Corp. Afterward, the government officials should make recommendations to solve the problem.

Lesson 7

What Other Intellectual Tools Are Useful in Making Decisions About Corrective Justice?

In the last lesson you learned a new intellectual tool—how to identify a wrong or injury and determine the seriousness of its consequences. In this lesson, you will learn two more intellectual tools useful in making decisions about corrective justice.

Intellectual Tool 2. Identify the relevant characteristics of the person or persons causing the wrong or injury.

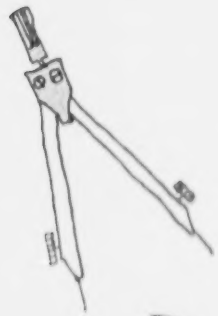
To determine the characteristics of the person or persons causing the wrong or injury, consider the following:

a. What was the person's state of mind at the time of the wrong or injury? To determine a person's state of mind, take the following into account:

   1) Intent. Did the person act intentionally to bring about the wrong or injury?

   2) Recklessness. Did the person deliberately or knowingly ignore risks that were obvious?

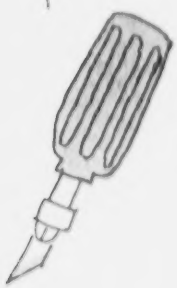
   3) Carelessness. Did the person act thoughtlessly without paying attention to risks that were foreseeable?



4) **Knowledge of Probable Consequences.** Did the person know, or should the person have known, the probable results of his or her actions?

5) **Control.** Did the person have physical and mental control over his or her actions?

6) **Duty or Obligation.** Did the person have a duty to act or not act in a certain way in order to prevent the wrong or injury?



7) **Other Considerations.** Did the person have any important values, interests, or responsibilities that might justify or excuse his or her actions?

b. What is the person's **past history**?

One important factor to consider is whether the person had committed a similar wrong or caused a similar injury in the past.

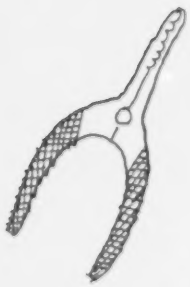
c. What **character and personality traits** has the person shown?

Looking at the person's character and personality might involve examining his or her reputation, for example.

d. What were the person's **reactions** after causing the wrong or injury?

Did the person attempt to justify his or her actions, indicate lack of concern, or express sorrow or remorse? Consideration may be given to whether the person expressed regret for what had happened or acknowledged that what he or she did was wrong.

e. What was the person's **role** in causing the wrong or injury?



It may be important to consider whether the wrongdoer was acting alone or with others. If a person was acting with others, was he or she pressured to take the action that caused the wrong or injury?

Intellectual Tool 3. **Identify the relevant characteristics of the person or persons who were wronged or injured.**

In order to arrive at a fair decision in a case of corrective justice, it is also important to ask certain questions about those who were wronged or injured.

a. Did the person or persons contribute to causing the wrong or injury in any way?

b. What is the person's ability to recover from the wrong or injury?

To arrive at a fair decision in a case of corrective justice, what questions should you ask yourself?

Problem Solving

Dig This!

Use the intellectual tools you have learned in this unit to help you solve this problem.

To begin, divide into groups of six. Each person in the group should be assigned a part in "The Tomb." Read your parts aloud. Then work together to consider the relevant characteristics of Professor Shard and also of those who were injured or wronged. To help in your considerations, complete the accompanying chart.

Afterward, discuss the "What do you think?" questions in order to arrive at a group decision about what, if anything, should be done about Shard. Then compare your group's decision with the opinions of the rest of the class.

The Tomb

The Time and Place: Headquarters of the International Archeological Society, 1890

The Actors: Monsieur DuBois, Sergeant at Arms
Colonel Hardwood, President of the International Archaeological Society
Naruz Bay, of the Egyptian Affairs Council
The accused: Professor Dusty Shard
Witnesses: Rock Bottom, P.T.Barnone

Monsieur Dubois: Be seated and come to order. The Board of Inquiry in the matter of Professor Shard is now in session. On my right is the honorable Naruz Bay of the Egyptian Affairs Council. And on my left is the distinguished president of the society, Colonel Hardwood. I now turn the hearing over to Colonel Hardwood.

Colonel Hardwood: Thank you, Monsieur DuBois. A decision in this case has been reached in the courts. Professor Dusty Shard stands convicted of crimes against Egypt, against science, and against Pandora T. Barnone. However, because this is an unusual situation, this society has been asked to make recommendations to the judge in setting a penalty. There must be some response to Professor Shard's actions, but our recommendations must also reflect a concern for fairness in this matter. With this in mind, we shall begin the inquiry. Monsieur Bay, please read the official charge.

Bay: Professor Dusty Shard has been accused and convicted of assaulting P.T. Barnone, stealing valuable archeological treasures, and causing their destruction.

Hardwood: Call the first witness.

DuBois: The board calls Rock Bottom. Mr. Bottom, please take the witness chair.

Bay: Would you please tell us, Mr. Bottom, about your role in the ill-fated 1889 Egyptian expedition?

Bottom (nervously): I was Professor Shard's field assistant. I had served in the same way on two previous expeditions. In February, 1889, Shard asked me to join him in Cairo. I had never seen him so excited. He believed he was on the trail of a great discovery—the tomb of the last Pharaoh, Sebek-Hotep. He showed me pictures of fragments of funeral pottery that had been found in a little valley 300 miles from Cairo.

The fragments bore the name of the Pharaoh, which could only mean one thing: the tomb of the Pharaoh was somewhere in that valley. I could understand Professor Shard's excitement. He had made some important discoveries in the past, but he had never found a Pharaoh's tomb. He was excited not only for himself, but also for what it would mean for science. Because the ancient Egyptians believed in life after death, a Pharaoh was buried with all sorts of food, clothing, and furniture— everything that might be needed in the next world. The tombs also included many treasures—beautiful objects of gold and precious stones. These things in themselves are very valuable, but they also can give scientists a more complete idea about life in Egypt thousands of years ago. This information is invaluable.

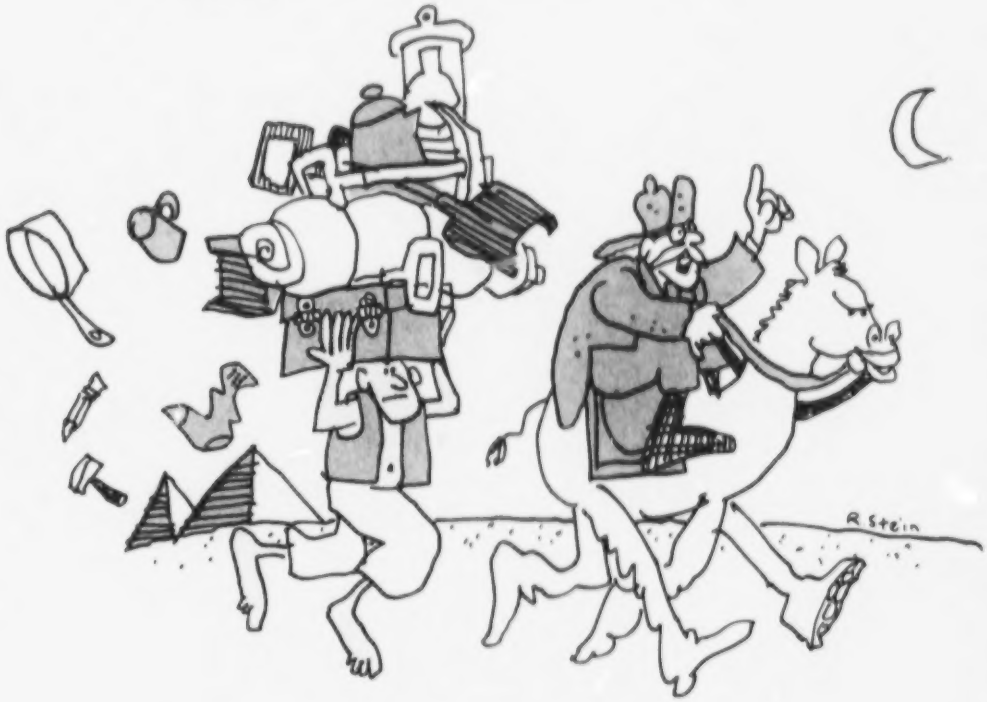
After several weeks,the expedition was organized. Everyone's hopes were high as we set off up the Nile. At Carnak, we disembarked and began our overland journey. The going was so rough that we had only gone six miles by sunset. Just as we were about ready to retire for the night, we heard a shout. "Riders approaching! Riders approaching!"

Since that area is plagued by bandits, we weren't taking any chances—we had our guns at the ready. But the riders were not bandits. They were P.T. Barnone and her expedition. Barnone told us that she, too, was searching for the tomb of Sebek-Hotep. When she showed us pieces of pottery similar to the ones we had, we realized we were all following the same trail.

Shard was furious. He and Barnone were long-standing rivals—with different motives. Shard was a scientist. Barnone was a promoter. Whenever Barnone made a find, she made an exhibit out of it and charged top dollar. She had made a fortune out of her rare discoveries.

Shard hated everything Barnone stood for. He vowed to find the tomb first and ordered Barnone out of the camp.

The next morning we broke camp early. Shard was determined to get to the site before Barnone. He was like a madman. He drove us all to our limits. By nightfall, we found ourselves within a few miles of our goal. The next day we reached a rise overlooking the valley. We could see Barnone's camp already set up in the hills on the other side. Somehow, she had beaten us there. But Shard wasn't worried; his instincts told him the tomb was on our side of the valley.



We soon set up camp and began our search. For two weeks we dug and found nothing. Then on the fifteenth day, a workman's shovel struck a stone step—and another —and another. Shard thought that these steps would surely lead to the tomb. But it was just a dead end. He was terribly disappointed.

Suddenly, a workman arrived from Barnone's camp. They had found the tomb and a vast storehouse of treasure. Shard took the news in stunned silence.

Then, calmly and deliberately, Shard ordered ten of us to arm ourselves and get the pack mules. Before we knew it, we were crossing the desert toward Barnone's camp.

When we arrived at the camp, Barnone was busy celebrating. The tomb had been left lightly guarded. This was the chance Shard had hoped for. He ordered us to overthrow the guards and seize the treasure. He said it was the only way to make sure the treasure was used only for scientific purposes.

Once in the tomb, Shard ordered us to bring Barnone to him. I had a funny feeling about this. I feared for Barnone's safety. I argued with Shard, pleaded with him to change his mind, but he wouldn't budge. When I continued to oppose him, he ordered me back to our own camp under guard. I was released by the desert police three days later.

Hardwood: Thank you, Mr. Bottom, you may step down. Monsieur DuBois, please call the next witness.

DuBois: The board calls P. T. Barnone. Mademoiselle Barnone, please take the witness chair.

Hardwood: Will you please relate the events that took place the night in question?

Barnone: I will with relish, sir. It had been a very long day, a very long day indeed. By midmorning, we had cleared the rubble away from the entrance to the tomb and there it was—the royal seal. It was a very emotional moment, and it was some time before I realized the importance of the find.

That evening, I ordered a celebration of our good fortune. We were just getting started when we were surrounded by armed men. Then I was forcibly taken to Professor Shard in the tomb.

He was like a madman, ranting and raving and calling me names. He told me I was a discredit to science. I tried to reason with him. I showed him the permit given to me by the Egyptian government, authorizing my expedition. But he just laughed and tore up the permit in my face.

I was very frightened. I didn't know what this maniac might do. In desperation, I rushed him. He grabbed a statue—of course it was priceless—and raised it as if to

strike me. Suddenly, two of Shard's henchmen grabbed me from behind. They tied me up and then loaded the treasures onto the pack animals.

I pleaded with Shard, but it did no good. They left me there in the tomb helpless, as they headed out into the desert.

The next morning one of my men found me and set me free. We broke camp and began the long trek back. We reached the desert police post at Carnak the next day. A patrol was sent to pursue Shard and his cohorts. Two days later, he was in custody.

Unfortunately, some of the treasure had been destroyed. The loss to science, to the world, is immeasurable.

Bay: Thank you for your testimony, Miss Barnone. You may step down. Please call the next witness.

Monsieur DuBois: Mr. President, the only remaining witness is Professor Dusty Shard.

Hardwood: Professor Shard, it is your right to make a statement on your behalf for consideration by this board.

Shard: Thank you, sir. I will make a statement. Let me begin by saying that I now believe that the actions I took on the expedition of 1889 were a terrible mistake. I am prepared to take the full consequences for these actions. The only thing I have to say in my defense is that at the time I was under a tremendous amount of pressure. I thought my actions were necessary to preserve the contents of the tomb.

Hardwood: Professor Shard, what happened after you left P.T.Barnone's camp? You had almost a two-day head start. How were the police able to capture you so easily?

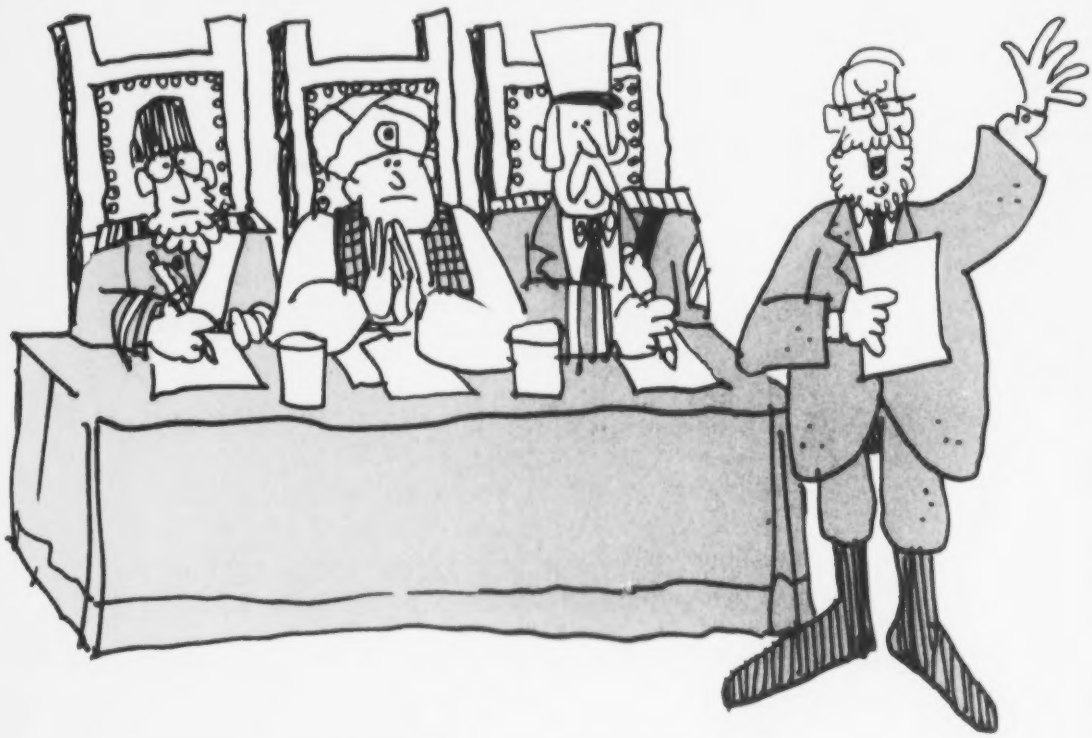
Shard: I guess you could say that once I was out in the desert I came back to my senses. At first, all I could think about was getting the treasure away from that pernicious promoter and turning it over to the proper authorities. But in our hurry, we became careless. While we were crossing a ravine, one of the pack animals slipped and fell. Almost everything in the pack was smashed to smithereens.

It was a terrible loss. It made me realize the treasure was too fragile to survive a desert crossing without proper crating. If it was to be saved, we had to stop. I ordered the men to halt, and we waited for the patrol to catch up with us.

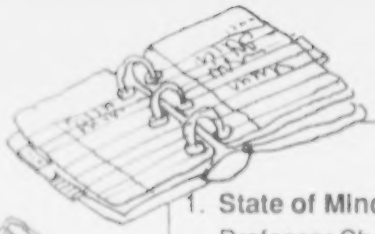
Hardwood: Thank you, Professor. You may step down. I will conclude by saying that our decision in this matter will be a difficult one. Professor Shard clearly committed serious wrongs—the detainment of P.T. Barnone and her party, the theft of the treasure, and its partial, if unintended, destruction.

On the other hand, we must take into consideration that Professor Shard is a dedicated scientist with a long and distinguished career. He was under great emotional stress and suffering from physical exhaustion. These factors also must be weighed in our decision.

Bay: We have many options. We may recommend a prison term, banishment from Egypt, money damages, or some other response. Our only guide is justice. The board will now adjourn to consider its decision.



What is your initial reaction to the story? Should Shard be severely punished or not? Was P.T.Barnone herself responsible in any way for what happened? After analyzing "The Tomb" using the chart on the next page as a guide, see if you still agree with your initial impressions.



Notes on Professor Shard

1. **State of Mind:** During the hearing, several clues to Professor Shard's state of mind were revealed. How would you describe Shard's state of mind in terms of the following considerations:

   a. intent: _____

   _____

   b. recklessness: _____

   _____

   c. carelessness: _____

   _____

   d. knowledge of possible consequences: _____

   _____

   e. control: _____

   _____

   f. duty: _____

   _____

   g. other considerations: _____

   _____

2. **Past History:** Rock Bottom testified that he had served Shard "on two previous expeditions." Was there evidence of past wrongdoing? Suppose Bottom had said that on one of those occasions, Shard had used force against others. Should such a consideration be taken into account when deciding what a fair response to Shard's conduct should be? If so, in what way? _____

   _____

   _____

   _____

   _____

   _____

3. **Character and Personality:** Hardwood referred to Professor Shard's dedication and his long and distinguished career. What aspects of Shard's character and personality are relevant in considering a fair response to his wrongdoing? _____

_____

_____

4. **Reactions:** How did Shard react after his wrongful actions? Did he express regret in any way? _____

_____

_____

_____

5. **Role:** What was Shard's role in causing the wrongs or injury? Did he act alone? Did he act under the influence of others?

_____

_____

_____

Notes on Pandora T. Barnone

1. **Contribution of the Person Wronged:** Barnone testified that after Shard tore up her permit, she was very frightened and "in desperation ... rushed him." Did Barnone contribute to the wrong or injury? If so, how? _____

_____

_____

2. **Ability to Recover from the Wrong or Injury:** Barnone suffered temporary wrongs but some priceless artifacts were destroyed. Should the inability to recover property have a bearing when determining a fair response? If so, in what way? _____

_____

_____

What do you think?

1. What penalty, if any, would you recommend for Professor Shard and why?
2. Do you think the intellectual tools you have learned so far in this unit are enough to consider when deciding on an appropriate response to a wrong or injury? If not, what other considerations should be weighed?

Using the Lesson

1. Imagine that Shard was sentenced to perform community service, including giving lectures to university students who hoped to become archaeologists themselves one day. Write an outline for Shard's lecture. What points do you think he should make about the 1889 expedition and what he learned from it? What should the lecture be entitled?
2. Work with classmates to record "The Tomb" as a radio drama, including the final scene—the sentencing of Professor Shard.

   Store your radio play in the school library for other students to enjoy. You might also wish to have copies of the study chart available for your listeners.
3. In recent years, a number of nations have raised issues of both distributive and corrective justice relating to archaeological finds. For example, the nations of Mexico, Egypt, Italy, and Israel have all raised questions about who owns the artifacts discovered on excavations within their territorial boundaries. Should they remain in the country of their origin? Work with a partner to develop a set of three to five guidelines to address this problem. What penalty, if any, should be given to those who don't follow these guidelines? Be sure to consider issues of both distributive and corrective justice.

Lesson 8

What Responses Can We Make to Wrongs and Injuries?

In the last lessons, you learned that the basic goal of corrective justice is to "set things right" when a wrong or injury has occurred.

Often, we also wish to prevent similar wrongs or injuries from happening because we want to live in an orderly and just society.

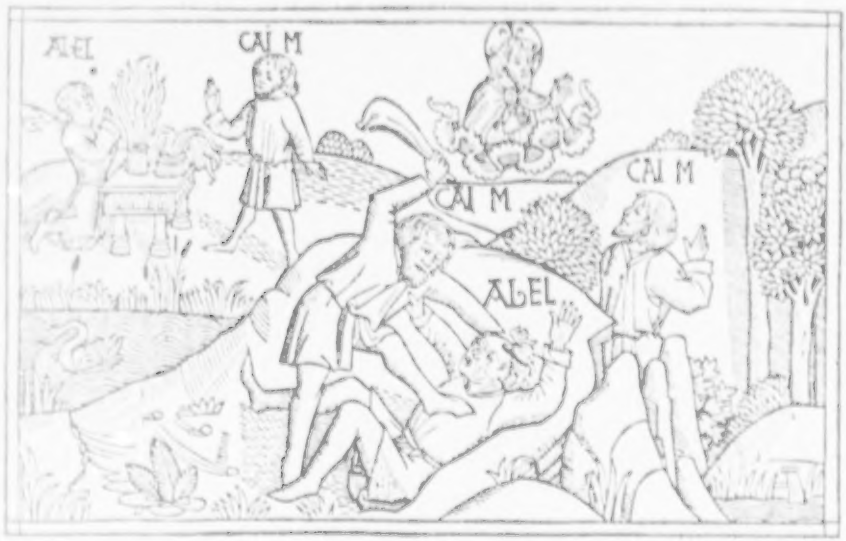
The Preamble to our Constitution sets out two goals which are related to establishing justice:

- to "insure domestic tranquility"
- to "promote the general welfare"

This desire to promote order, security, and the general welfare of all citizens often guides the way we respond in a case involving corrective justice.

Other values and interests might also be considered. On the one hand, we might want to satisfy our sense of human dignity and respect for life. On the other hand, we might be motivated by a desire for retribution or perhaps even revenge.

It is often difficult to weigh all these considerations, some of which might be contradictory. In this lesson, you will have a chance to explore what you think would be the best response in different situations in which there has been a wrong or injury. In the process, you will learn not only more about issues of corrective justice, but also about your own values and personal sense of justice.



Intellectual Tool 4. Consider common responses to wrongs and injuries.

There are many ways to respond to wrongs and injuries. Some of the most common responses used in our society are

a. To inform someone that what he or she did was wrong or injurious

The primary purpose of this response is to inform and thereby educate those who have committed a wrong or injury, so they won't repeat the offense in the future. In such cases, a wrong or injury may, strictly speaking, go uncorrected.

b. To overlook or ignore a wrong or injury
Sometimes a wrong or injury may be overlooked or ignored because it is so unimportant that correcting it is not worth the effort or expense. Sometimes a wrongful act may be attention-getting behavior; ignoring it may prevent repetition of such conduct.

c. To forgive or pardon someone for a wrong or injury
A person who has been wronged or injured may choose to forgive the wrongdoers. Refusing to require corrective justice may set a model of charity and goodwill that results in wrongdoers regretting their actions and mending their ways.

d. To punish someone for a wrong or injury
One's sense of justice can sometimes be satisfied by making wrongdoers suffer a punishment of some sort as a form of retribution or revenge. Such actions may also be seen as a way to "teach wrongdoers a lesson" so they won't commit such wrongs or injuries again. Punishment may also deter others from wrongdoing by "setting an example."

e. To require someone to restore something taken
The purpose of requiring a person to restore something is to return things to the way they were before a wrong or injury occurred. Requiring such action of someone who has wronged or injured another may also serve to prevent or deter future wrongs and injuries.

f. To require someone to compensate for a wrong or injury
In many cases, life, limb, property, or reputation cannot be restored. In such cases, justice may require that something of equal or greater value be given to the person wronged or injured to compensate for the loss and "set things right."

g. **To provide treatment or education**
Providing treatment or education for someone who has caused a wrong or injury is not intended to correct the wrong or injury. Its purpose is to deter the person from causing future wrongs or injuries by helping the person become a responsible member of society.

Problem Solving

Match Game

Match each of the examples below to one or more of the following types of responses: (a) to inform (b) to overlook or ignore (c) to forgive or pardon (d) to punish (e) to restore (f) to compensate (g) to treat or educate.

Example	Response
1. Brian was committed to a youth authority institution for one year. During that time, he received training in auto mechanics. At least once a week, he was visited by Dr. George, the resident psychiatrist. At first Brian did not cooperate with Dr. George. He told the doctor that he would rather watch television than go to the auto mechanics class. After a few weeks, however, he began to enjoy class and look forward to the weekly sessions with the doctor.	No. _____

2. Six-year-old Craig started a small grass fire while playing with matches. A fire fighter visited Craig and his parents and told Craig of the danger he had created and the damage he had caused. No. ____

3. A newspaper ran a retraction correcting a previously printed statement which unjustifiably called a congressman a "thief." No. ____

4. As compensation for acts of vandalism at the local school, six boys and girls were required to pick up litter in the city park every weekend for a month. No. ____

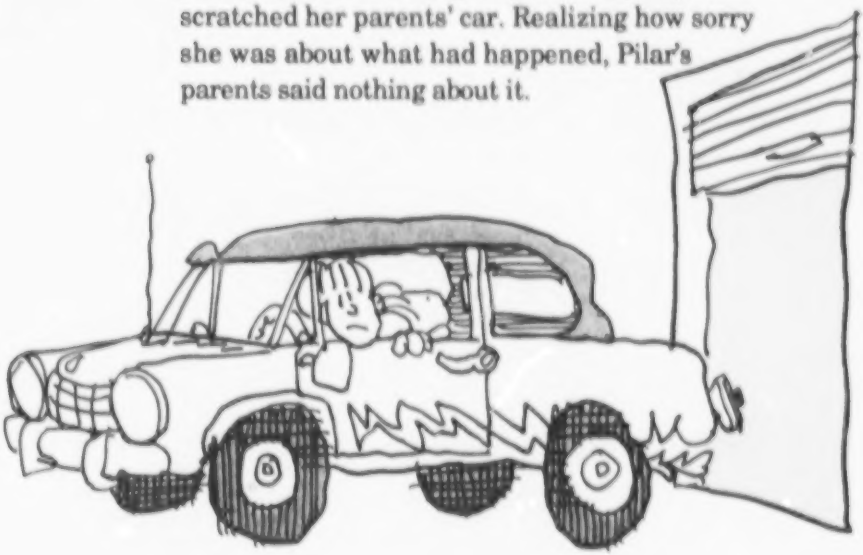
5. A twenty-year-old woman was charged when she broke a window of a house bought by an Asian family. This act was one of a series of acts against minorities in the neighborhood. The judge imposed a ten-day jail sentence, saying, "This sort of thing has to stop! I want you to tell all your friends what happened here." No. ____

6. After Carl had served fifteen years of a life sentence, the governor pardoned him on the recommendation of the prison warden and parole board which said his behavior had been excellent and that he was completely rehabilitated.

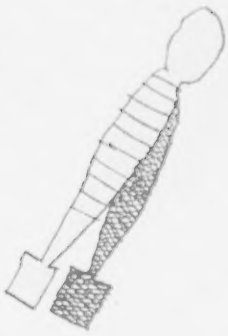
No. _____

7. When Pilar was learning how to drive, she pulled too close to the garage and slightly scratched her parents' car. Realizing how sorry she was about what had happened, Pilar's parents said nothing about it.

No. _____



Intellectual Tool 5. Consider related values and interests when responding to a wrong or injury.



As you can see, there are different ways to respond to a wrong or injury. Often more than one response may be chosen. For example, a convicted thief may be placed in prison and also be provided treatment to help him or her become a useful member of society. Imprisonment may serve the purposes of punishment, treatment, prevention, and deterrence all at the same time.

In deciding what response should be made to a wrong or injury, it is important to consider related values and interests that may be promoted or undermined by the response. Below is a list of some of the most important values and interests to consider.

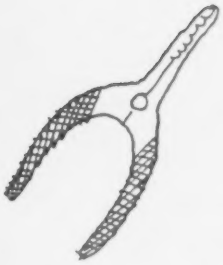
a. **Correction.** What responses would correct the wrong or injury?

b. **Prevention and/or deterrence.** Which responses might prevent the person from causing further wrongs or injuries, or deter others from similar acts?

c. **Distributive justice.** What responses have been made to others who have caused similar wrongs or injuries? Are similar cases being treated alike?

d. **Human dignity.** Which responses take into account the belief that all persons, no matter what their actions, should be treated with dignity, as human beings with basic rights?

e. **Preservation of human life.** What responses are most likely to preserve human life, both of the wrongdoer and other members of society?



f. **Efficient use of resources.** How costly are different possible responses in terms of the resources available to society?

g. **Freedom.** How do possible responses affect the freedom of the wrongdoer and other members of society?

h. **Proportionality.** What would be a reasonable response in relation to the seriousness of the wrong or injury? Does the "punishment fit the crime"?

i. **Revenge or retribution.** What responses might satisfy the desire to "get even"?

What do you think?

Work in small groups to read and discuss the news stories on pages 79 and 80. Then answer the first three questions below. Afterward, reunite as a class to answer question number 4.

1. What is fair or unfair about the response to the wrong or injury in each news story?
2. What values and interests are being promoted or undermined in each case?
3. Do you think the response made in each case was a correct one? If not, what do you think would be a better response?
4. After discussing your opinions, can you make any generalizations about what you think our society's responses to wrongs and injuries should be?

Judge says, "Serve don't shoplift."

A twelve-year-old living in a homeless shelter, who has been convicted of a first offense shoplifting charge, is ordered to do ten hours of community service instead of being sent to the Youth Detention Center.

Court Gives Green Light to Damages Payoff

The court orders Mike O'Malley to pay Nguyen Van Dinh $5500 in damages to his car and $8379 in medical bills for injuries Nguyen received after O'Malley crashed into his car which was stopped at a red light.

Pres Pardons Kingpin

A number of minor officials were given steep fines and jail sentences for influence peddling in a major government agency. However, a high-ranking official with close political ties to the White House, who formerly was a top campaign fund-raiser, received a presidential pardon for his role in the illegal government contract award scandal.

Gang Gets Probation

Three members of a teenage gang beat and robbed a sixty-year-old woman standing at the bus stop. The woman was hospitalized for two months and will be permanently crippled as a result of the beating. The boys were arrested and placed in Juvenile Hall for six months, where they were given psychological counseling, released, and placed on probation.

Vandals Take Stock

Teenage vandals responsible for obscene graffiti on the town's Viet Nam war memorial were sentenced to sitting in stocks in front of the memorial for three consecutive Saturdays.

Fingers Fingered For Life

Baseball pitcher and long-standing MVP Dan "Itchy" Fingers is banned for life from playing major league ball, after he was convicted in court of illegally betting on the outcome of a competing team's game.

Using the Lesson

1. Work with a partner to role-play each of the following situations. Afterward, discuss how you responded in each case and why.
   a. A police officer stops a motorist for making a right turn on a red light, which is illegal in this city. The motorist has an out-of-state driver's license.

b. Whenever Mrs. Burns talks on the telephone, her three-year-old son howls so noisily to get her attention that she can't hear.

c. Thomas accidentally falls against Miguel, causing him to sprain his ankle.

2. Scan the Bill of Rights of your state and federal constitutions. Which rights pertain to corrective justice and our society's response to wrongs and injuries? In what way are the rights in the documents similar to each other or different? What values and interests are promoted in each document in terms of corrective justice? Are these values and interests similar or different? Write your answers in your program notebook.

3. Use the intellectual tools learned in this unit to analyze the following case. Then write your opinion as to the proper response in your program notebook as if you were the judge. Be sure to explain what interests and values you have taken into consideration in order to arrive at your decision.

State X had a law prohibiting children under the age of twelve from selling newspapers or magazines in any public place. Mrs. A and her nine-year-old daughter, residents in State X, sold religious pamphlets for five cents each on a busy street corner. Mrs. A was arrested and convicted of violating the state's child labor law.

Mrs. A argued that she should not be punished because she was exercising her right to religious freedom.

4. Although crime statistics in the United States declined 2% between 1983 and 1988, during those same years, arrests of those under eighteen for murder rose 22.2%.

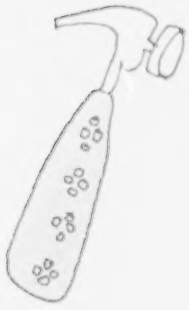
   In your opinion, what should be done about juvenile offenders who commit violent crimes? What should our response as a society be?

   Work with a small group of students to review the common responses to injuries and wrongs presented in this unit. Also check the laws in your state regarding the age at which juveniles can be certified (declared and treated) as adults when charged with a particularly heinous crime. Afterward, design a storyboard for a filmstrip, video, or TV documentary focusing on issues of corrective justice which have an impact on youth.

Lesson 9

How Would You Solve These Problems of Corrective Justice?

In this unit, you have learned to use a number of intellectual tools to help you analyze issues of corrective justice. Now it is time to put that knowledge to work to tackle two problems—one from classic Russian literature and another which might have been found on the pages of your local consumer magazine.



Work together in small groups. You will be assigned one story to analyze. Use the chart on the next page to help you consider the story assigned to your group. (Not all considerations listed on the chart may be relevant to your case.)

Afterward, choose a group spokesperson to explain your case and your analysis to the rest of the class. Then use the "What do you think?" questions that follow to guide a class discussion about these two problems of corrective justice.

Intellectual Tools for Issues of Corrective Justice

1. Identify Wrong or Injury

a. What was the wrong, if any? _____

_____

What was the injury, if any? _____

_____

b. How serious was the wrong or injury? _____

1) Extent: How many people or things were affected? _____

_____

2) Duration: Over how long a period of time did the wrong or injury take place? _____

_____

3) Impact: How serious is the harm or damage? _____

_____

4) Offensiveness: How offensive or objectionable was the wrong or injury in terms of your sense of human dignity, morality, or other values? _____

_____

2. Identify Relevant Characteristics of the Person or Persons Causing the Wrong or Injury

a. State of Mind

1) Intent: Did the person act intentionally or purposely to bring about the wrong or injury? _____

_____

2) Recklessness: Did the person deliberately ignore obvious risks? _____

_____

3) Carelessness: Did the person act thoughtlessly, without paying attention to forseeable risks? _____

_____

4) Knowledge of Probable Consequences: Did the person know, or should the person have known, the likely results of his or her actions? _____

_____

5) Control: Did the person have physical and mental control over his or her actions? _____

_____

6) Duty or Obligation: Did the person have a duty to act or not act in a certain way to prevent the wrong or injury? _____

_____

7) Other Considerations: Did the person have any important values, interests, or responsibilities that might justify or excuse his or her actions? _____

_____

b. Past History: What in the person's past history is relevant in this case? _____

_____

c. Character and Personality: What facts about the person's character and personality are relevant in this case? _____

_____

d. Reactions after causing the wrong or injury: What feelings did the person express after causing the wrong or injury? _____

_____

e. Role: What was the person's role in causing the wrong or injury? _____

_____

3. Identify Relevant Characteristics of the Person or Persons Wronged or Injured

a. Contribution: Did the person contribute to causing the wrong or injury in any way? _____

_____

b. Ability to Recover: What is the person's ability to recover from the wrong or injury? _____

_____

4. Consider Common Responses to Wrongs and Injuries

a. To Inform: Should the person be informed that what he or she did was wrong or injurious? _____
Why or why not? _____

_____

b. To Overlook or Ignore: Should the wrong or injury be overlooked or ignored? Why or why not? _____

_____

c. To Forgive or Pardon: Should the person be forgiven or pardoned? Why or why not? _____

_____

d. To Punish: Should the person be punished? Why or why not? If so, in what way? _____

_____

e. To Restore: Should the person be required to restore what was taken or damaged? Why or why not? _____

_____

f. To Compensate: Should the person be required to compensate in some way for the wrong or injury? Why or why not? If so, in what way? _____

_____

g. To Treat or Educate: Should treatment or education be provided? Why or why not? _____

_____

5. Consider Related Values and Interests

a. Correction: What responses would result in a correction of the wrong or injury? _____

_____

b. Deterrence and/or Prevention: Which responses may prevent the person from causing further wrongs and injuries and/or deter others from similar acts? _____

_____

c. Distributive Justice: What responses have been made to others who have caused similar wrongs or injuries? _____

_____

d. Human Dignity: What beliefs about human dignity should be taken into account in deciding what would be a proper response? _____

_____

e. Preservation of Human Life: What responses will be most likely to preserve the life of the wrongdoer and the lives of members of society? _____

_____

f. Efficient Use of Resources: How costly are various responses in terms of available resources? _____

_____

g. Freedom: How do various responses affect the freedom of the wrongdoer and other members of society? _____

_____

h. Proportionality: What responses would be reasonable in relation to the seriousness of the wrong or injury? _____

_____

i. Revenge or Retribution: What responses might satisfy the desire for revenge or retribution? _____

_____

Problem Solving

1. Murder He Wrote

adapted from Fyodor Dostoyevsky's *Crime and Punishment*,1866

Rodion Raskolnikov left his family's home in the countryside of Russia to move to St. Petersburg to study at the university. His family was poor, but struggled to send him a little money so he could continue his studies. Raskolnikov lived in a tiny, dark room and ate sparingly. He soon found it increasingly difficult to concentrate on his studies. His own poverty did not disturb him, but he kept thinking about the sacrifices his family was making for him.

As a result of his depression and poor health, the young student became obsessed with committing the perfect crime. It would be a crime which would free his family from poverty and rid society of a worthless person. It would be a great experiment which, if successful, would prove that he was above the law and above conscience.

Raskolnikov resolved to kill Aliona Ivanovna, an elderly pawnbroker who had given many students money in exchange for family heirlooms. The woman had become rich from the poverty of students like Raskolnikov. Yet she forced her stepsister Lizaveta, a kindly, mentally-impaired woman, to work hard.

In Raskolnikov's mind, the pawnbroker was a person who did not deserve to live. He felt that Lizaveta and the world would be better off if the pawnbroker died.

Raskolnikov went to Ivanovna's apartment at a time when he knew that Lizaveta would be working in the marketplace. He told Ivanovna that he had a silver cigarette case to pawn. When she turned her back to him, he struck her with an ax. Once he was sure she was dead, he began to rob the apartment.

All seemed to be going as planned when suddenly Lizaveta unexpectedly returned home. She was so terrified when she saw the dead body she could hardly speak or move. Frantically, Raskolnikov realized that Lizaveta could identify him as Ivanovna's murderer. Panicked, he killed Lizaveta with the ax before she could scream or run out of the apartment.

Raskolnikov ran back to his room and hid the ax. Soon he began to feel guilty about the murders—so guilty that he subconsciously wished to be caught and punished. He began hinting to his friends that he knew who the murderer was.

Meanwhile, the police had begun their investigation of the crime. They questioned the students and neighbors who had known the pawnbroker. However, it was Raskolnilkov himself, plagued by guilt, who gave the police the information that eventually led to his being identified as the murderer.

In the end, having lost all peace of mind, Raskolnikov confessed, and was tried for murder.

The Big Deal Meat Company sold freezers and filled large-quantity meat orders. To boost sales, the owner, Chuck Roste, developed a sales plan which he promoted through trained sales personnel. The promotion campaign was directed at lower and middle income families.

DON'T BE LEFT OUT IN THE COLD!
Even a family of modest income can enjoy the finest meats at considerable savings. Sign up for our plan today, and you'll enjoy the best cuts of quality meats tomorrow.
And just look at these savings!
As a member of the Prime Cuts Club, you'll enjoy two servings of meat each day for the price you would normally pay for just one at your local market. All made possible by our low discount prices and special package deal—a freezer and a six-month supply of quality meat. What more could any happy homemaker ask for?
Your family deserves the best, so why not enjoy the best?
And $ave! $ave! $ave!

Potential customers were reached through advertising and telephone surveys which promised a free gift to anyone who allowed the salesperson to make a presentation. The salesperson showed potential customers color photos of large quantities of meats, and charts that indicated large yearly savings if you purchased the food plan offered by the Big Deal Meat Company. The free gift was a flashlight that cost the company about twenty cents.

A key component of the sales presentation emphasized the low monthly cost of the meat purchasing plan. Each salesperson told customers, "For less than you are spending now, you can own your own freezer, have a butcher shop in your home, eat steaks and roasts, save money by cooking in large quantities and freezing leftovers, and enjoy the convenience of 'freezer living'."

The salesperson kept asking, "How are you going to like eating T-bone steak for 47 cents a pound?"

Yet consumer reports indicated that such statements were far from the actual truth.

Big Deal or Big Scam?

Consumer complaints have led to the investigation of the Big Deal Meat Company's freezer game. Among other false claims, the "side of beef" sold by the company at 47 cents a pound, weighs 30 percent less after being cut and prepared for freezing, because of waste. Therefore, the actual cost per pound in the freezer ends up to be about 90 cents. For that 90 cents the customer receives mostly hamburger and cheaper cuts of meat, and despite salespersons' claims to the contrary, very few T-bone steaks.

In addition, the quality of the meat is of "commercial" grade and not as good as the "choice" grades of beef sold in most supermarkets. Furthermore, the cost of the freezer in the package deal is actually higher than better models sold in local stores and nationwide chains.

In fact, the Big Deal Freezer "plan" was actually a contract that obligated the buyer to purchase a freezer and a "side" of beef. Monthly payments included an exceptionally high interest charge. Big Deal sold mostly in low income neighborhoods, especially in areas lived in by recent Spanish-speaking immigrants. Most of these customers spoke little English, and even fewer could read or write English. None of the salespersons spoke Spanish, but they had memorized key phrases to say in Spanish during the course of the sales presentation. In addition, they had learned to say the numbers and amounts in Spanish, in order to make price comparisons.

Part of the contract called for service on the freezer for the first year. However, the buyer was not told that the contract to repair freezers was held by a service company in Los Angeles. In case of a breakdown, the freezer would have to be shipped to Los Angeles at the owner's expense. According to the contract, if a local dealer repaired the freezer, the owner would have to pay the labor costs.

It was quite common for the freezers to break down during the first year. If the owner was unable to afford the costly repair, he or she was forced to sell the freezer and give away the meat, or cook and store as much of it as possible. With no freezer, much of the food spoiled.

Owners who attempted to use the warranty on the freezer could seldom get in touch with anyone from the Big Deal Meat Company. If the consumers tried to get results from the company by withholding monthly payments, they quickly learned that they were now in debt to Thrifty Finance Company, and not Big Deal. Since Big Deal had sold all of its contracts to Thrifty Finance, owners were obligated to pay the full amount owed, whether the freezer was working or not.

If the buyer failed to make monthly payments, Thrifty Finance added penalty charges and harassed the buyer with threats of deductions from wages or attachments on cars and other property.

The result was a family with no meat, a useless appliance, and several hundred dollars debt.

What do you think?

After presenting your group's analysis to the rest of the class, use the following questions to spark a class discussion about these two cases.

1. What do you think should be the response or responses to the wrongs and injuries described in each story?
2. Do you think the response to the premeditated killing of Aliona Ivanovna should be more severe than the response to the killing of Lizaveta? Explain your reasoning.
3. What does the expression "buyer beware" mean? Does it apply to the Big Deal Meat Company case?
4. Should the salespersons of the Big Deal Meat Company be held responsible, as well as Chuck Roste and other corporate officials?
5. What, if anything, should be done to protect people from the kinds of practices the Big Deal Meat Company used?
6. Are the responses suggested in each case designed to prevent or deter future wrongs and injuries? If so, how?
7. Upon what values and interests other than prevention and deterrence were your responses based?

Using the Lesson

1. Imagine that you live in czarist Russia at the time of the Ivanovna murders. Choose one of the following titles and write a newspaper editorial on the Raskolnikov case and the response you think should have been made to it.
   - Who's the Real Victim?
   - A Travesty of Justice
   - In the Interest of Civil Order
   - The Plight of the Poor and the Place of the Pawnbroker

- An Eye for an Eye
- True Confessions
- Suppress Radical Student Slasher
- Violence against Women

2. Pretend that you are the consumer reporter for your local TV station. Your assignment editor has just given you the Big Deal story. Write the copy for a one-to-two-minute newscast. Include not only a synopsis of the key facts of the story, but also "buyer beware" recommendations to educate your viewers.
3. Timothy Dalton, star of the James Bond film "License to Kill," described the movie to an entertainment reporter.

It's about vengeance and retribution, about setting a wrong right, then expanding to take on a larger perspective—and as in all good Bond films, good does triumph over evil.

Imagine that you are a film critic. Write a movie review in your program notebook of a film which raises similar issues of corrective justice.

Lesson 10

What Response Would You Recommend in This Case About Ethics in Government?

To conclude this unit, you will have the opportunity to explore the question of ethics in government from the perspective of corrective justice.

Problem Solving

Scandal!

Part 1

Read the news article that follows and the witness statements in Part 2. To help you identify the wrongs and injuries caused by some of the Bay City government officials, work with a study partner to complete the chart provided in Lesson 9, pages 84-87. Afterward, you will be working with the rest of your class to role-play a government hearing.

BAY CITY CHRONICLE

May 15, 1990

EXTRA EXTRA EXTRA
ETHICS SCANDAL UNCOVERED....

Political Time Bomb Rocks Mayor's Administration

Bay City: With an election only six months away, Mayor Bob N. Weave's administration has been blown sky-high by a growing scandal of widespread corruption.

The *Chronicle* has learned of dozens of incidents involving bribe taking and illegal payoffs to city inspectors. Agencies involved include the Fire Department, the Building Code Office, and the Health Commission. Also implicated are a number of state-licensed building contractors.

In order to investigate the rumors of corruption, the *Chronicle* provided funds and authorization to investigative reporter Penny Dreadful to purchase a run-down snack shop. She proceeded to complete a few repairs, but left many serious building and health code violations. Dreadful then contacted Tommy Rot, a state-licensed building contractor, and asked him to visit the premises.

Ms. Dreadful asked Mr. Rot if he could arrange the necessary inspections to satisfy the city's building, health, and safety codes. Rot told her that he would be glad to "run things through the city" for her if she first paid him a "consultant's fee."

After Ms. Dreadful gave Rot a sizable amount of cash, he gave her some of his business cards. He then explained that whenever an inspector came to the premises, Dreadful should put $100 in an envelope, along with Rot's business card, and give it to the inspector.

"If you do that, you won't be hassled," Rot assured her. "Trust me."

The first inspector to come to the shop was Smokie Waters, from the Fire Department. Ms. Dreadful gave Inspector Waters an envelope of cash and Rot's card, as she had been instructed.

Ignoring a number of serious fire hazards, Inspector Waters completed a department form stating that the snack shop was safe for occupancy.

Ms. Dreadful followed the same procedure each time an inspector came to the snack shop. Each inspector supplied the needed verification once he or she was given the money-filled envelope and Rot's card.

According to Dreadful, not one of the city employees conducted a thorough investigation. Ms. Dreadful then invited the department heads of each government agency to her shop.

(continued on p. 98)

(continued from p. 97)

After their investigation, a total of thirty-eight serious code violations were identified. The department heads voiced outrage and unanimously agreed that the snack shop constituted "a serious public health and safety hazard."

Bay City's up-and-coming young district attorney, Marshall Law, has assured city taxpayers that he'll "get to the bottom of this outrageous perversion of the common weal if I have to work night and day to do it."

Mayor Weave was unavailable for comment, although his press secretary, Spin Kontrol, said that the mayor "has got the situation well in hand and has already scheduled an emergency meeting of the Ethics in Government Task Force."

Meanwhile, City Counsellor Gerri Mander, a member of the task force and a potential political candidate in the next mayoral election, did some scheduling of her own.

At an early morning press conference, Mander stated, "I think it's abominable that the mayor has allowed such contemptible corruption to creep into every crevice of City Hall. The good citizens of Bay City should be outraged."

Mander continued, "These revelations are a time bomb, just ticking away, and I predict they'll soon blow up in the mayor's face.

The time for shakedowns is long past. Now it's time for honest citizens to shake up the corrupt political machine in this city."

Part 2

Work with classmates to role-play a meeting of the mayor's Ethics in Government Task Force. The task force has been assigned the responsibility of investigating the scandal and recommending what should be done about it.

The task force is bipartisan. However, some members are already looking forward to the next election cycle and know that there is some political hay to make. One in particular, Gerri Mander, is interested in challenging Mayor Bob N. Weave for his post.

Additional roles to play are the parts of the city clerk, Conn Puter, who will be recording the session; the three

witnesses; and members of the news media, who will report on the scandal and interview the key players after the hearing. (You may wish to use a video camera to do televised "live shots" from City Hall.)

Finally, there is Heidi Indignant, a representative from the Keep Your Eye on the Rascals citizen group; the attorneys for the parties involved; and the young district attorney, Marshall Law, who is hoping to make a name for himself with this case.

Use the following witness statements as guides for playing the roles. Following the hearing, the Task Force should deliberate, using the questions on the chart to help them consider possible responses. The Task Force should then make its recommendations, indicating whether they are designed to (1) correct the wrongs or injuries, (2) prevent future wrongs or injuries, or both.

If all members of the Task Force cannot agree, individuals may wish to issue their own statements to the waiting press. Afterward, discuss the activity by answering the "What do you think?" questions.

Witness Statements

1. Tommy Rot, state-licensed contractor

The witness is 62 years old, married, and the father of four children ranging in age from 11 to 26 years old. He has been a licensed state contractor for nearly 35 years.

Mr. Rot acknowledges that he has personal assets in excess of one million dollars, but will not give details as to how these were acquired. State records indicate that Mr. Rot was suspended from contracting activities in 1975 for a period of six months. The suspension was a result of his supplying faulty building materials on a housing contract. There are no other prior criminal or professional violations.

In giving his testimony, Mr. Rot admits that he has done what was described in the *Chronicle* article. However, he seems genuinely surprised at the uproar resulting from the article. He expresses the belief that his conduct was not in any way unusual.

"It's just Bay City," he says. "I've been a contractor here for over 30 years and that's the way things have always been done here and always will be."

2. **Robin Banks**, Department Head, Building Code Office

Mr. Banks is 47 years old and divorced. He has been employed by the city for 17 years. He has held his present position for the last eight years. His current salary is $35,000 per year. Mr. Banks has a good civil service record and received an excellent rating in his last personnel evaluation. He has no prior criminal record.

During his testimony, Mr. Banks states, "I knew nothing about the alleged acts of people in my office. Maybe I should have known, but I didn't."

When Mr. Banks is reminded that last year the mayor had asked him to look into complaints about bribe-taking by building code inspectors, he shrugs and says, "I asked a few of my people about it. They said no one was taking bribes. When you've been in city government as long as I have, you learn not to ask too many questions."

3. **Smokie Waters**, Bay City Fire Officer

Officer Waters is 23 years old and the mother of two children. She has been an inspector with the Fire Department for two years. Her personnel record with the department is very good. She has no prior criminal record, although she was once suspended from Bay City High School for two weeks for cheating on an exam.

In her testimony, Officer Waters admits that she has taken bribes.

"I know what I did was wrong. When I started with the department, I never took a bribe. But then I saw the other inspectors taking them and nobody seemed to care.

"Look, I'm a single mother with two kids to support, and a Fire Department salary doesn't go very far. So I figured that if I took a few bribes, my kids would have decent clothes to wear and a roof over their heads in a safe neighborhood—a place where they could play outside without getting harassed by gangs or pressured into taking drugs. The way I see it, my responsibility to my children comes first."

After testifying, Officer Waters, upon the advice of her legal counsel, delivers a letter to the Task Force. The letter states that she is willing to testify about bribe-taking by other inspectors if the Task Force will recommend that she not be prosecuted.

What do you think?

1. What responses did the Task Force recommend?
2. Do you think the responses will correct the wrongs or injuries? Why or why not?
3. What special interests and values did you consider?
4. Can you make any generalizations about what our society's responses should be in instances of unethical practices by government officials?

Using the Lesson

1. Fifteen-year-old Tomontra Mangwin of Royal Palm Beach, Florida, is suing seventeen-year-old basketball star Marlon Shadd for standing her up for the high school prom.

   Tomontra said she was not only humiliated, but out $280 dollars for a ruffled chiffon gown, $19 for a matching purse, and $49.53 for hairdresser costs. According to her complaint, she and Marlon had a valid verbal agreement to go to the prom---a contract he broke.

   Marlon argued in turn that he broke his ankle five days before the dance. He said he told Tomontra of his injury and then scheduled a meeting on prom night with university recruiters about a possible sports scholarship.

   Use the intellectual tools you have learned in this unit to reach a decision in this case. Does the case involve a wrong or injury? What values and interests should be considered? Could Marlon have escorted Tomontra to the prom even with a broken ankle? Should Tomontra receive damages? Write your answers to these questions in your program notebook.

2. In 1989, a major scandal broke in Washington, D.C., involving the Department of Housing and Urban Development (HUD). Work with a small group of classmates to research the scandal and the resulting investigation. Use the charts provided in this unit to help you analyze what happened. Then make a list of your recommendations for preventing future HUD agency fraud and misconduct.

3. Work with a group of classmates to take a school survey similar to the one on page 103 based on a 1989 *Newsweek* poll about the nation's response to the drug crisis. Afterward, analyze the data and publish the results and your own recommendations in your school and local newspaper.

Sample Poll

	SUPPORT	OPPOSE
1. Do you support the following punishments for casual users of illegal drugs?		
Suspend driver's license for 1-3 years	_____	_____
Seize cars used to buy or carry drugs	_____	_____
Inform employers	_____	_____
Publish name in newspaper	_____	_____
Require community service	_____	_____
Send to environmental work camps	_____	_____
Fine up to $10,000	_____	_____
Require a period of house arrest	_____	_____
Require at least some jail time	_____	_____
2. To raise more money for the fight against illegal drugs, how do you feel about the following measures:		
Increase federal taxes on liquor and cigarettes	_____	_____
Add 1% additional tax to personal income taxes	_____	_____
Add 1% additional tax to corporate income taxes	_____	_____
3. Would you be willing to submit to random drug testing?	_____	_____

(Actual poll reprinted in entirety by permission in Teacher's Guide)

Unit 3

Concluding Activity

The most extreme punishment a society can give is death. Not all cultures in North America have had capital punishment. In Cheyenne society, for example, it was unheard of; instead, banishment was the most extreme punishment given.

In the United States capital punishment was common during the colonial and revolutionary era and in the early years of our young nation. Nevertheless, the constitutionality and morality of capital punishment have often been questioned. Most recently, the debate in Congress has focused on the use of the death penalty in the "war on drugs."

Discuss with your study partner the question of whether or not capital punishment should be used in the United States. To begin, read the Fifth, Eighth, and Fourteenth Amendments to the Constitution. The article and graphs found on page 106 should also be useful.

Then consider the opinions of the congressional representatives reported in the *Congressional Quarterly*. With which representatives would you agree?

Holding a Class Debate

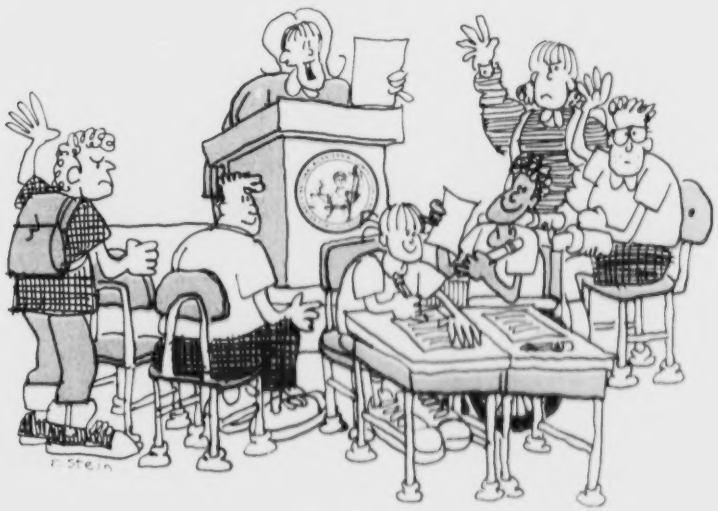
You then may wish to hold a class debate on a specific issue involving capital punishment, such as the death penalty in response to violent crimes or in cases involving drug trafficking.

To do so, divide into three groups. Each group should use the intellectual tools provided in this unit to analyze the data and historical information.

One group will develop an oral argument in favor of the death penalty; a second group will develop an argument opposed to the death penalty; and the third group will serve as judges. Each group will have 3 to 5 minutes for its presentation, and 1 to 2 minutes for rebuttal. Spokespersons should be chosen from each group to present their arguments before the panel of judges.

After hearing the arguments, the judges should deliberate and then issue their opinion. If certain individuals disagree with the majority, they should issue their own dissenting opinions.

And with good precedent! In one case which raised the question of capital punishment, the justices of the United States Supreme Court issued nine separate opinions!



Capital Crime: Notes on the Death Penalty

Carolyn Callahan & Michael DiLeo

Tom Sawyer was one of 16,066 persons arrested for murder in 1986, and his case is one of an unknown number in which potentially fatal mistakes were made. When the U.S. Supreme Court affirms a death sentence, its judgment rests on two underlying assumptions: that capital punishment is evenhanded with regard to class and color and that the appeal-heavy road to execution is long enough to prevent anyone from being executed in error. A look at the actual workings of the death penalty in the United States shows that these assumptions may be, like the conviction of Tom Sawyer, utterly mistaken. A reporter's notebook:

Number of people executed in the United States this century	more than 7,000
Number of people sentenced to death and later proved innocent	139
Of the 139, number who received a reprieve within 72 hours before scheduled execution	22
Of the 139, number actually executed	23
Number of people now on death row	2,186
At the rate of 23 errors per 7,000 executions, number of people now on death row who are likely to be proven innocent posthumously	7
In a 1988 study of 14 juveniles on death row, number who had serious head injuries as children	14
Number who were physically abused	12
Number of juveniles now on death row	30
Number of mentally retarded persons executed since 1984	5
Percentage of death row inmates who are black	39.8
Percentage of U.S. population that is black	12.1
Percentage of death row inmates who are white	51.8
Percentage of U.S. population that is white	77.5
Average cost of a case resulting in execution, counting appeals, in Florida	$3.2 million
Estimated cost of life imprisionment for 40 years in Florida	$516,000
Amount California taxpayers could save each year if the death penalty were abolished	$91 million
Number of persons on death row in California	226
Number who can afford private counsel for an appeal	2

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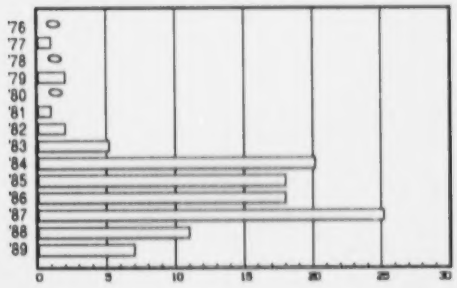
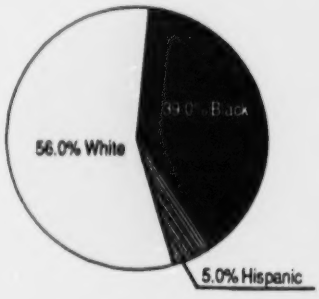
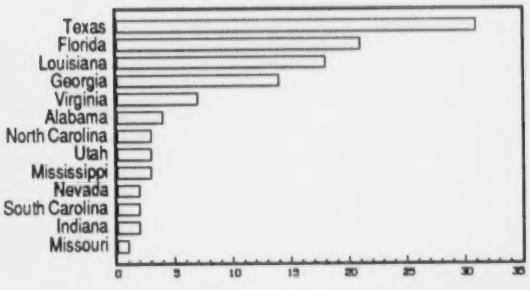
Death Sentences Carried Out



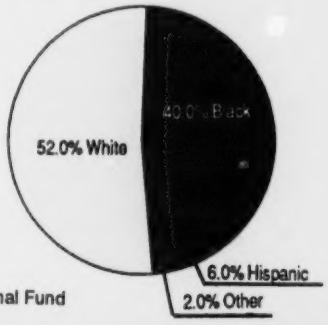
Race of Those Executed



Executions by State



Race of Prisioners on Death Row



Source: NAACP Legal Defense and Educational Fund

Congressional Quarterly

September 10, 1988

The House approved two major amendments as part of its debate over the death penalty. One, offered by Rangel, provided mandatory life prison terms for drug-related killings. It was adopted 410-1 ....

But 40 minutes later, members approved an amendment that provided the death penalty for certain drug-related murders by the overwhelming margin of 299-111. The proposal, sponsored by George W. Gekas, R-Pa., superceded the Rangel language....

Although the death penalty is controversial, the debate was tepid and just above perfunctory. Members have been through this territory before and presented their arguments principally for the record.

James L. Oberstar, D-Minn., ... said life imprisonment was sufficient punishment for killers. "Put them in jail and let 'em think about it for a lifetime," he said.

But Gekas retorted,"The war on drugs cannot be fought without the death penalty."

When the debate turned to the death penalty amendment, Rangel contended that it was a counterproductive move because it would hamper efforts to bring foreign drug traffickers to justice. He cited a letter from Richard D. Gregorie, chief assistant U.S. attorney in the Southern District of Florida .... [that said] passing legislation that provides for the death penalty "would be useless in that the very defendants who might be subject to those penalties would not be extradited from their safe havens abroad."

As for domestic drug traffickers, Rangel said, "Those bums who are dealing in drugs are not afraid of the death penalty. They live under the fear of death every day." And William L. Clay, D-Mo., another death-penalty opponent, said, "Official violence is not the answer to unofficial violence."

Gekas retorted that the death penalty is an effective deterrent. Gekas noted that the death penalty can be waived in the cases of drug kingpins in foreign countries. And he said the death penalty was important to help protect law-enforcement officers.

The amendment "is designed to say as best we can, 'We will protect you,' " he added. James A. Traficant Jr., D-Ohio, ... said capital punishment was necessary because "it's time to fight fire with fire...Just saying 'no' is not enough."

By voice vote the House adopted several additional amendments that modified the Gekas proposal. They included language:

- To bar the death penalty for someone who is mentally retarded, by Sander M. Levin, D-Mich.
- To allow a jury, in considering the death penalty, to take into account whether a defendant had a significant prior criminal record, that the defendant committed the offense under severe mental or emotional distress and that other defendants equally culpable in the crime would not be put to death, by Don Edwards, D-Calif.
- To require the General Accounting Office to conduct a study of the costs of putting the federal death penalty into effect, by Edwards.
- To bar the death penalty for an individual who, because of mental disability, cannot understand why he or she is being tried and the reasons for the potential punishment, by Edwards.
- To ensure that defendants in death-penalty cases have adequate legal representation, including access to "reasonably necessary" investigative and expert witness services, by John Conyers, Jr., D-Mich.

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Unit 4
What Is Procedural Justice?

Procedural justice has been called "the keystone of liberty" and "the heart of the law."

Procedural justice refers to

- the fairness of the ways information is gathered and
- the fairness of the ways decisions are made. It does **not** refer to the fairness of the decisions themselves.

Respect for procedural justice is often a key indicator of a democratic political system. It has been said that the degree of procedural justice in a society is a good measure of the degree of freedom in that society, and of that society's respect for human dignity and other basic human rights.

The goals of procedural justice are to

- increase the chances that all information necessary for making wise and just decisions is gathered
- ensure the wise and just use of the information in making decisions
- protect the right to privacy, human dignity, and freedom

The Bettmann Archive

Henry II of England (1133-1189) was known as the Law Giver. In addition to siring Richard the Lion Hearted, Henry fathered a code of laws under which trial procedures were the same regardless of where in England the trial was held. If a person's rights varied in each state, do you think procedural justice would improve or be undermined in our country?

This unit on procedural justice focuses mainly on the activities of local, state, and federal government agencies. However, issues of procedural justice are often raised in your home, school, work place, and community, too.

As you study the next lessons, you will be introduced to a new set of intellectual tools to help you analyze issues of procedural justice. Then you will have a chance to apply the knowledge you have gained in this program to analyze a case which raises issues in all three categories of justice—distributive, corrective, and procedural.

Lesson 11

What Intellectual Tools Can Help You Evaluate Issues of Procedural Justice?

- You are accused of having done something wrong. You are punished without having an opportunity to tell your side of the story.
- You and several friends have planned to go together to see a movie. When you arrive to discuss which show to see, you are irritated to learn that the group has already decided to see a film you think is boring.

- **A city council holds a hearing during which it decides how to spend five million dollars of tax money. Notice of the hearing is published so that interested individuals and groups from the community may attend the meeting and express their opinions on how the tax funds should be used.**
- **A suspected terrorist is tortured for five days before confessing to participating in two bombings in which several people were killed.**

Previously you may not have recognized situations like those described above as raising issues of procedural justice. However, as you can see, such issues are quite common in our homes, communities, nation, and world.

What do you think?

In each of the situations described above, a procedure was used to gather information or make a decision.

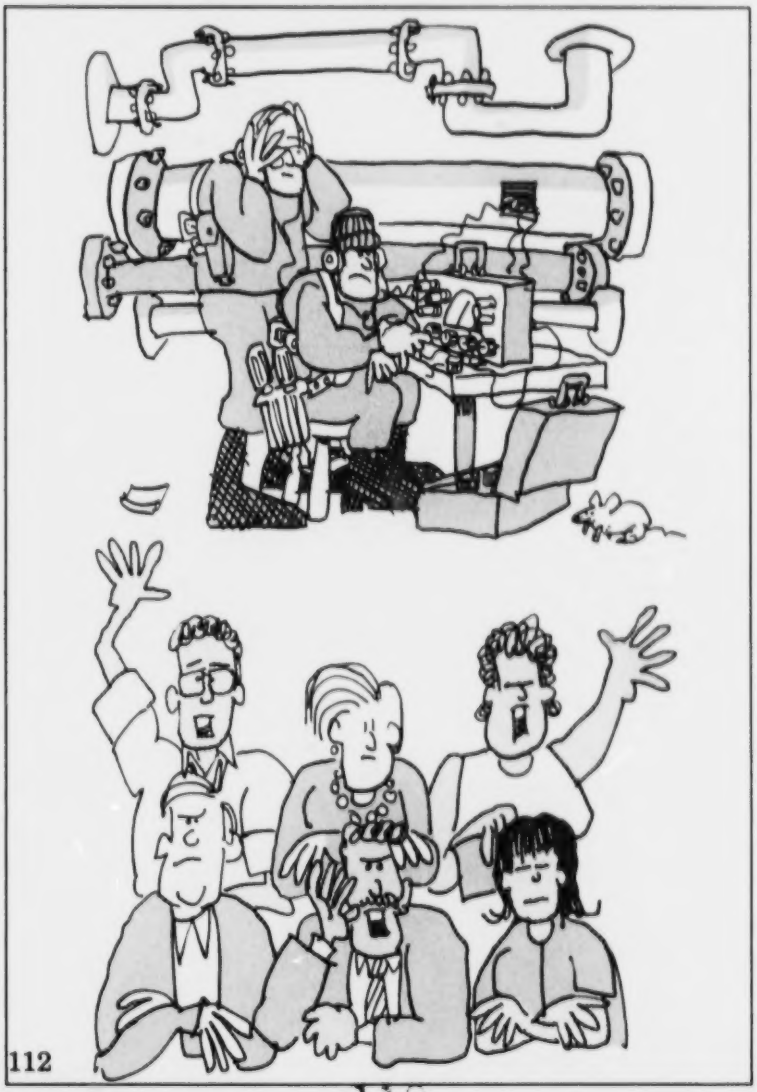
1. How fair were the procedures? If unfair, what would you change to make them fairer?
2. Describe a situation to your study partner which raises a question of procedural justice. How would he or she resolve the issue fairly? Do you agree or disagree with your partner's decision? Why?

A New Set of Tools

In the past units, you learned to use certain intellectual tools to help you evaluate issues of distributive and corrective justice. In this unit, you will learn three new tools to help you evaluate issues of procedural justice. The first two of these tools are introduced in this lesson.

Intellectual Tool 1. Identify the information sought or the decision to be made.

What information is being sought or what decision is being made in each of the following situations?



The police obtained a warrant to tap the phones of known members of organized crime. The police were seeking information about a suspected narcotics shipment.

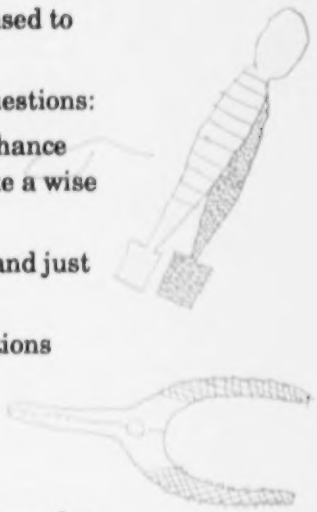
The Board of Education held public hearings on whether or not to bus students in order to achieve racial desegregation.

Intellectual Tool 2. **Evaluate the procedures used to gather information or to make a decision.**

In evaluating a procedure, ask yourself these questions:

- Does the procedure increase or decrease the chance that all reliable information necessary to make a wise and just decision is gathered?
- Does the procedure followed ensure the wise and just use of the information in making a decision?

To answer these questions, apply the considerations described below.



Consider This

a. Comprehensiveness: Does the procedure increase the chance that all information necessary for making a wise and just decision is obtained?

b. Public Observation: Does the procedure allow interested members of the public to observe how information is gathered and used in making decisions?

c. Effective Presentation: Does the procedure allow interested persons to effectively present information they wish to have considered in the decision-making process?

d. Impartiality: Has the gathering of information and the decision making been conducted without bias?

e. Reliability: Does the procedure ensure that the information which has been gathered is reliable?

f. Notice: Is enough notice given of when, where, and why information is to be gathered or a decision made, so those affected can prepare adequately?

g. Predictability and Flexibility: Is the procedure predictable and flexible enough to promote justice?

h. Detection and Correction of Errors: Are interested persons able to review the procedure followed in order to detect and correct any errors?

What do you think?

Match the examples below to one or more of the special considerations raised: **(a)** comprehensiveness, **(b)** public observation, **(c)** effective presentation, **(d)** impartiality, **(e)** reliability, **(f)** notice, **(g)** predictability and flexibility, **(h)** detection and correction of errors. Then decide if you think the procedure followed in each case promoted justice. If not, what recommendations would you make to correct the procedure?

1. A U. S. Senate committee held a hearing on the proposed use of public lands in Alaska by petroleum companies. Interested individuals and groups were offered a place on the agenda and an opportunity to address the committee at one of its meetings in Washington, D.C.

   _____

2. The former leader of a developing nation was placed under arrest by leaders of its new revolutionary government. After being tortured in secret for eight days, he agreed to "confess" his "crimes" to the public on television. Outraged by his confession, citizens called for his execution.

   _____

3. Yoko had prepared for three weeks to make a presentation to the Coastal Commission on behalf of a conservationist organization to which she belonged. Due to heavy traffic she arrived late, missing her place on the agenda. She was given an opportunity to make her presentation at a later time.

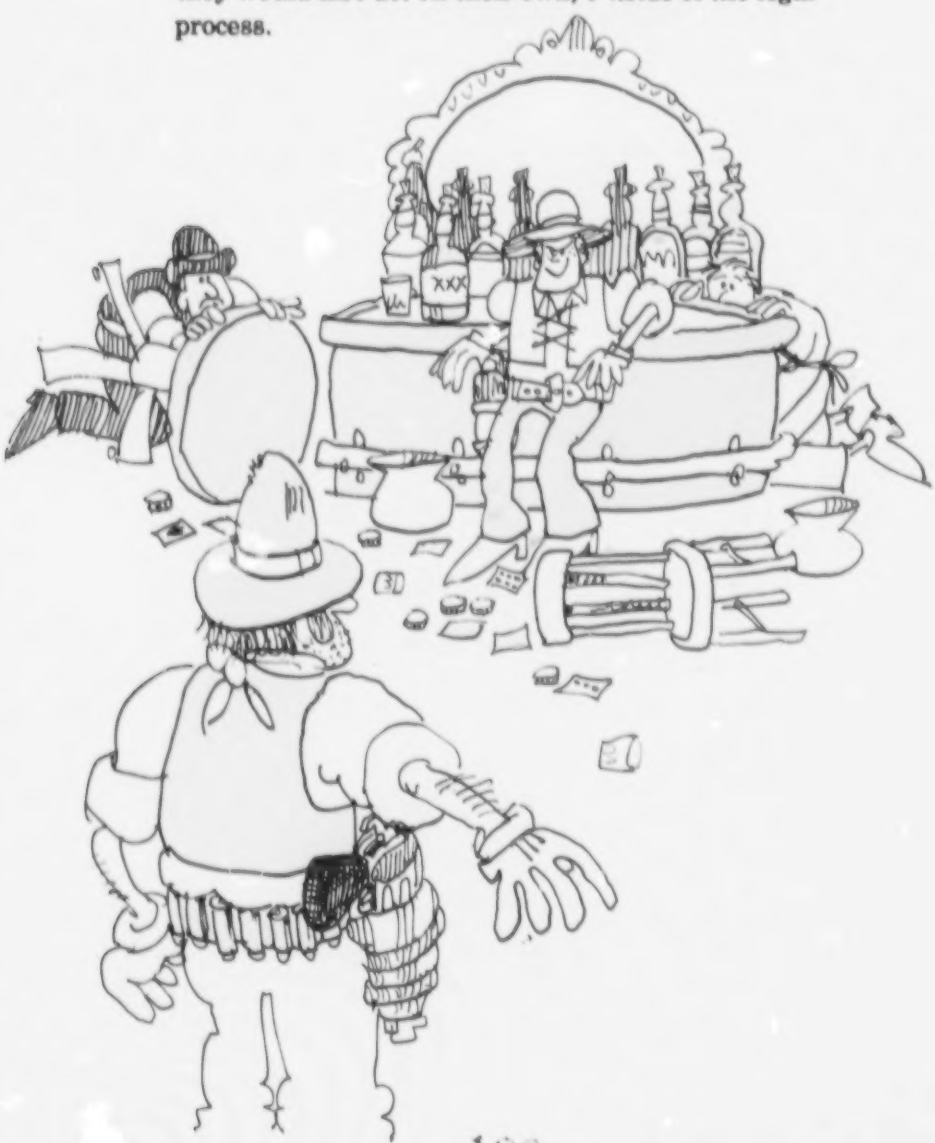
4. A community agency with the authority to change the zoning of residential property to commercial property had been asked by a local business for a permit to build a small factory in a residential area. The agency decided to hold a public hearing on the matter and announced the hearing date four days in advance.

5. The government brought suit against a large retail company for unfair business practices. The case for the government was handled by a member of the Attorney General's office who had five years' experience in dealing with such matters. The company hired the foremost law firm in the state to handle its case and engaged expert economists to testify on its behalf.

6. The chairman of Citizens to Promote Nuclear Power controlled the agenda of a public forum on regional energy needs. He made sure that those who held views in opposition to his own on nuclear power had the opportunity to fully participate.

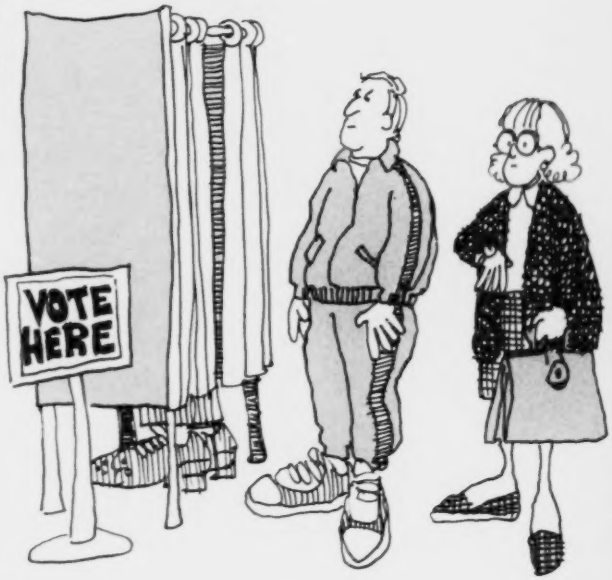
Using the Lesson

1. Procedural justice in the Old West was almost nonexistent. If a trial was held at all, it was probably at the local saloon, with little evidence presented and often no legal representation. It was common for people to "settle their own scores," often with a gun. Angered over the lack of law and order, many citizens decided that they would also act on their own, outside of the legal process.



Today, some citizens frustrated with growing crime rates and what they see as the failure of the court system, are turning once again to vigilante justice. Define vigilantism. Is it likely to promote or deter the goals of procedural justice? When, if ever, do you think people have the right to take the law into their own hands? Write your opinions and the justifications for them in your program notebook.

2. As you work in this unit, collect news articles about issues of procedural justice. After completing the unit, analyze the clippings. What generalizations if any can be made about issues of procedural justice being raised today? Do any of the news articles indicate differences in the way different political systems gather information and make decisions?



Lesson 12

What Other Values and Interests Should Be Considered in Determining Whether Procedures Are Fair?

A procedure may be useful and effective in enabling people to gather and evaluate information. At the same time, however, the procedure may ultimately be unfair because it endangers important interests or values which our society cherishes.

A third intellectual tool—considering other values and interests—is designed to focus your attention on this subject.

Intellectual Tool 3. Consider other values and interests. Does the procedure used protect or endanger important values and interests of our society?

In applying this intellectual tool, ask yourself whether the procedure protects important interests such as the efficient use of human, economic, and natural resources. Does the procedure also safeguard fundamental values such as privacy, individual freedom, equality, and human dignity?

What do you think?

Read the following situations and identify the important interests and fundamental values which should be considered in each case.

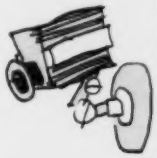
a. Today at all air terminals throughout the country, passengers and their baggage must be screened and x-rayed, and may be searched if necessary.

b. Some people have suggested that the writ of habeas corpus, guaranteed in the Constitution, be narrowed so that those on death row cannot appeal their sentences year after year at taxpayer expense.

c. In some countries such as El Salvador, Northern Ireland, South Africa, and Cambodia, persons suspected of crimes have been tortured to gain information and confessions.

d. Information on individual citizens in the United States is now kept in computers by private and government agencies. It is fairly easy for anyone to gain access to information about another person's tax records, bank deposits, or salary.

e. In an effort to curb the use of drugs in the United States, many lawmakers have suggested random drug testing in school and on the job.

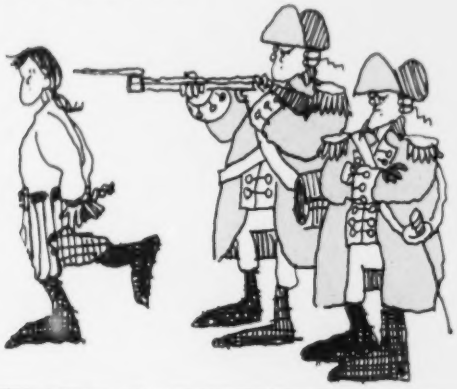


f. In the novel *1984* by George Orwell, each person's home has a telescreen in every room through which the police can watch all activities in order to discover law breakers.

g. In criminal cases, all persons are entitled to counsel. However, wealthier individuals can often employ more experienced and skilled lawyers and hire private investigators to help gather evidence on their behalf, while poorer individuals cannot afford the expense.

h. In the United States, illegal aliens and those seeking political asylum are often kept for many months in crowded, unsanitary detention camps, while government authorities evaluate what should be done in each case.

i. Just prior to the Revolutionary War, British soldiers were given the right to search the homes of colonists at any time to discover evidence of smuggling or other illegal activities.



Problem Solving

The Count of Monte Cristo

Read the following adaptation of *The Count of Monte Cristo*, by the famous novelist Alexandre Dumas. Although it is a fictional account, Dumas based his novel on the actual experiences of political prisoners in 19th century France.

To help you analyze the issues of procedural justice raised in the story, apply the intellectual tools you have learned. Work with a study partner or in a small group to complete the accompanying chart on pages 130-131. (Not all sections of the chart may be relevant to this case.)

Afterward compare and discuss your analysis with the rest of the class.

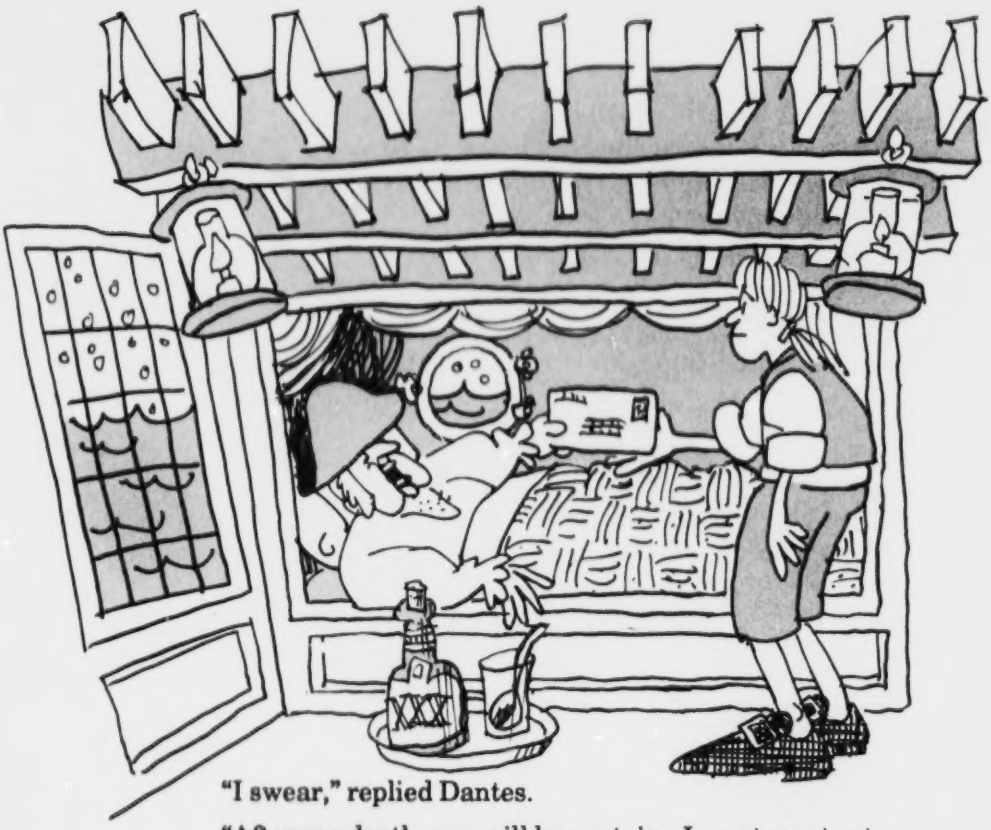
- **Were the procedures used for gathering information and making decisions fair?**
- **What values and interests were either promoted or undermined by the procedures used?**
- **What suggestions, if any, for improving the procedures would you recommend?**

The Imprisonment of Edmond Dantes

Scene 1

It is the winter of 1815, less than a year after the French emperor Napoleon Bonaparte was forced to abdicate and retire to Elba, an island off the coast of France. A three-masted ship sails the Mediterranean Sea, bound for Marseilles. Below in his cabin, the ship's captain lies dying of a brain fever. He sends for his first mate, nineteen-year-old Edmond Dantes, to make a last request.

"My dear Dantes, swear to do what I am going to tell you, for it is very important."



"I swear," replied Dantes.

"After my death, you will be captain. I want you to stop at the Isle of Elba and give this letter to Napoleon. Perhaps he will give you a letter in return. If he does, deliver it as I would have, had I lived."

"I will do it, Captain. But will Napoleon see me?"

"Here is my ring," said the captain. "Send it to him, and he will agree to see you."

Two hours later the captain was delirious. By the next morning he was dead.

Young Dantes was troubled by the captain's request. Dantes had never been interested in politics and was too young to have served in Napoleon's armies. Nevertheless, he knew, as all French citizens did, that Napoleon had been defeated. His exile on the Isle of Elba was, in fact, imprisonment.

However, Napoleon still enjoyed a large following in France, where many hoped that he would return to rule. The King of France who had replaced Napoleon considered those loyal to the former emperor traitors. Many of Napoleon's supporters had been imprisoned and executed. Others had gone underground in secret organizations. To be suspected of devotion to Napoleon, or even sympathy for him, was dangerous.

Dantes was aware of the danger. However, he believed that the last request of a dying man should be respected. Therefore, although troubled, he obeyed his commander's last orders.

As the captain had predicted, Napoleon gave Dantes a letter to be delivered to a man named Nortier in Paris. Dantes then sailed for Marseilles, where he was to marry a beautiful young girl named Mercedes.

Unknown to Dantes, however, several men were already plotting his downfall. One was jealous that Dantes, a young boy of nineteen, was now to be captain of his own ship. Another was in love with Mercedes himself and hated Dantes for taking her from him. The two men sent a letter to the police, telling them that Dantes had seen Napoleon and was carrying a letter to revolutionaries in Paris.

Scene 2

Music, laughter, and bright costumes fill the room. A plentiful feast has been prepared. Tables are set. Fruit and flowers scent the air. It is the marriage party of Edmond Dantes and Mercedes. Friends and family have arrived to toast the happy pair. After the feast, all will go to the church where the marriage ceremony will be performed.

"Shall we go?" Mercedes asked. "Two o'clock has just struck, and you know we are expected soon."

"To be sure!" cried Dantes eagerly. "Let's go right now!"

Suddenly, there was the dread sound of marching feet. The wedding party stopped, as the guests listened in terror.

Three loud knocks from the hilt of a sword struck against the oaken door.

"Open in the name of the law," boomed a voice from the other side, as an officer and five soldiers entered the room.

"Who is Edmond Dantes?" the officer demanded.

Dantes stepped forward.

"Edmond Dantes," the officer said, "I arrest you in the name of the law!"

"For what reason?"

"I cannot tell you, but you will be told at your first examination," the officer replied.

After shaking hands with all of his friends, Dantes surrendered to the officer. Then he turned to his family and Mercedes.

"Don't worry, there must be some mistake. Continue the celebration. I will return shortly, as soon as they discover their error."

"Goodbye, goodbye, Edmond!" cried Mercedes from the balcony.

"Goodbye, sweet Mercedes! We shall soon meet again!"

Scene 3

At the police station, Dantes is questioned by Monsieur de Villefort. Villefort is in favor with the King, but he knows that he has to be very careful to maintain this position. His father had been a supporter of Napoleon and even now is suspected of plotting against the King. Consequently, Villefort will have nothing to do with his father and has even changed his name to avoid being associated with him.

As a prosecutor for the King, Villefort knows that if he does not succeed in condemning anyone suspected of being loyal to Napoleon, he himself will be suspected.

Nevertheless, his first impression of Dantes is that he is an intelligent, courageous, and honest young man. As Dantes tells his story of the dying captain's request, his ignorance of politics becomes apparent. Villefort cannot help but believe him.

"Ah!" said Villefort, "this seems to be the truth. If you are guilty of anything, it is of not acting wisely. And considering that you acted on your captain's orders, I cannot hold you guilty."

"I am free, then, sir?" cried Dantes joyfully.

"Yes, but first give me the letter you were to deliver to Paris."

"You have it already, Sir. It was taken from me by the officers. It is there on your desk. It is addressed to Monsieur Nortier."

It was as if a thunderbolt had fallen into the room. Villefort could not have been more shocked. He sank into his chair, drew out the fatal letter, and looked at it with an expression of terror.

"Monsieur Nortier of Paris," he said, growing paler.

"Yes," said Dantes. "Do you know him?"

"No," Villefort replied quickly. "A faithful servant of the King does not know traitors."

"It is a conspiracy then?" asked Dantes, innocently. "I knew nothing about it."

"Yes, I realize that. However, unfortunately you do know the name of the person to whom the letter was addressed."

"But I had to read the address to know to whom to give the letter."

"Have you shown this letter to anyone?" Villefort asked.

"To no one, Sir. On my honor."

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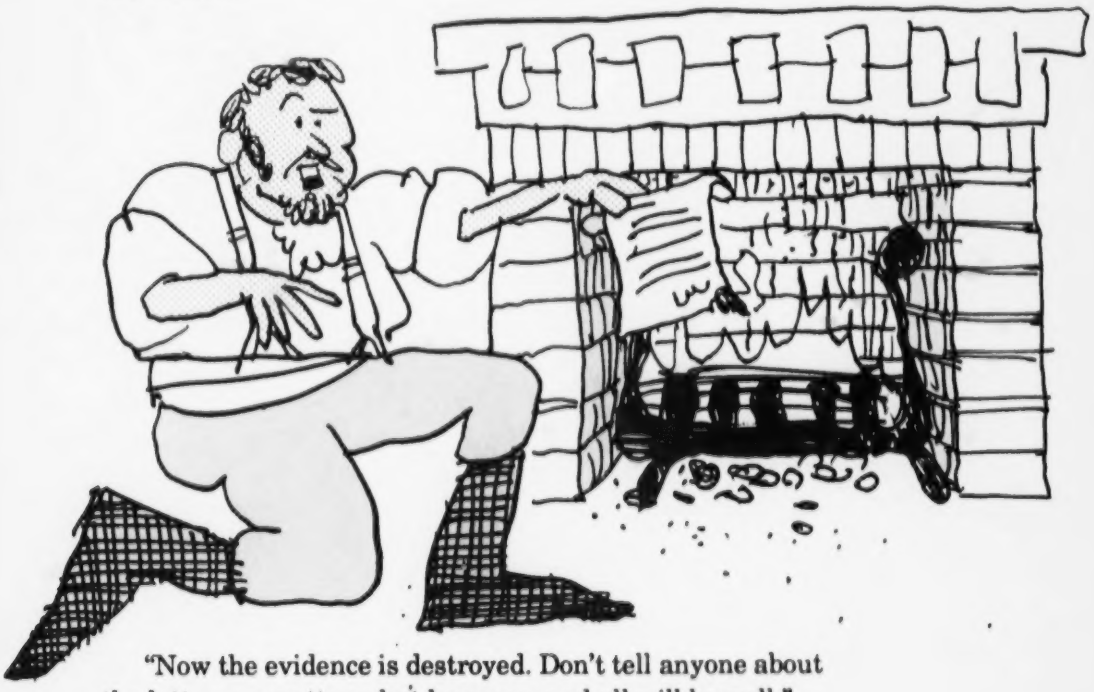
Villefort sat and thought for a moment. Dantes was puzzled. Why did the prosecutor look so troubled? Little did he know that Nortier was Villefort's father. If the conspiracy was revealed, Villefort would be ruined. At last, the prosecutor spoke.

"I am sorry, Dantes. But I can no longer free you right away. I must talk to the judge first. But I promise that I will try to help you. The main thing against you is this letter."

Villefort walked to the fireplace and cast the letter into the flames.



"Now the evidence is destroyed. Don't tell anyone about the letter, no matter what happens, and all will be well."

"I swear I will not," Dantes said.

Villefort rang a small bell. A policeman appeared. Villefort whispered some words into his ear and the policeman nodded.

"Follow him," Villefort told Dantes.

Scene 4

Dantes is taken in a carriage through the streets of the town, accompanied by four armed soldiers. The carriage stops when they reach the harbor. There twelve more soldiers come out of the darkness. Before Dantes realizes what is happening, he finds himself on a boat, skimming across the bay, seated between armed guards.

"Where are you taking me?" asked Dantes.

"You will know soon enough," answered a guard.

Wild and strange thoughts ran through Dantes' mind. Were they going to leave him on some distant shore?

They had not tied him, and this seemed to mean that he would be let go. Besides, Villefort had told him that as long as he didn't mention the letter, or the name of Nortier, he would be safe.

Dantes sat silently, staring through the darkness. Just then, the boat sailed passed Mercedes' home. A light was on in her window. If he were to shout, perhaps she could hear him.

Instead, he turned to the nearest policeman. "Friend, I beg you. Tell me where we are going. I am Captain Dantes, a loyal Frenchman. Tell me where you are taking me, and I swear upon my honor that I won't resist."

"You are from Marseilles and a sailor, and you still don't know where we are going?"

"I have no idea," Dantes replied.

"Look around you then."

Dantes leaned forward, peering through the darkness. Ahead was a black, towering cliff upon which stood the Chateau d'If, a gloomy fortress over 300 years old.

"But why are we going there?" cried Dantes.

The policeman just smiled.

" I can't be imprisoned! I haven't done anything! I've had no trial. Are there any judges or courts at the Chateau d'If?"

"Only a warden, soldiers, and good thick walls."

"What a fool I've been," Dantes thought.

Suddenly he tried to leap overboard, but was stopped by the quick action of the police.

When the boat touched shore, Dantes was taken to a cell. He no longer resisted, but walked like a man in a bad dream.

"It is late," said the jailor. "Here is bread, water, and fresh straw. I am afraid that is all that a prisoner can wish for. Good night."

Then Dantes was left alone, in darkness and silence.

Edmond Dantes remained in the Chateau d'If for fourteen years, until at last he made his escape.

Alexandre Dumas' own father had fought under Napoleon. However, Dumas himself, as a young attorney, worked for the Duke d'Orleans, later King Louis Phillipe. Always interested in theatre and the arts, Dumas used his talents as a writer to urge reform of the justice system in France. What are two reforms you would have suggested had you lived in France at the time when "The Count of Monte Cristo" was supposed to have taken place?

INTELLECTUAL TOOLS TO USE IN EVALUATING WHETHER PROCEDURES ARE FAIR	
Answer the following questions, citing specific examples from the text to support your responses.	
1. Information sought or decision to be made	
a. What information is being sought?	
b. What decision is being made?	
2. Discovery and use of information	
a. Comprehensiveness: Does the procedure increase the chance that all information necessary for making a wise and just decision is obtained?	
b. Public Observation: Does the procedure allow interested members of the public to observe how information is gathered and used in making decisions?	
c. Effective Presentation: Does the procedure allow interested persons to effectively present information they wish considered in the decision-making process?	
d. Impartiality: Has the gathering of information and the decision making been conducted without bias?	

e. Reliability: Does the procedure ensure that the information which has been gathered is reliable?	
f. Notice: Is enough notice given of when, where, and why information is to be gathered or a decision is to be made, so those affected can prepare adequately?	
g. Predictability and Flexibility: Is the procedure predictable and flexible enough to promote justice?	
h. Detection and Correction of Errors: Are interested persons able to review the procedure followed in order to detect and correct any errors?	
3. Protection of other values and interests	
a. Privacy and Freedom: Does the procedure protect the right to privacy and individual freedom?	
b. Human Dignity: Does the procedure protect the right of each person to be treated with dignity?	
c. Distributive Justice: Does the procedure protect basic principles of distributive justice?	
d. Other Considerations: Are there any other values and interests which you think are relevant in this case?	

Using the Lesson

1. Work with a study partner to complete this creative writing activity. Take the parts of Mercedes and Dantes. Write letters to one another in which you express your thoughts and feelings about the injustices that have occurred.
2. Imagine that you are Villefort. Write a journal entry in which you explain why you acted as you did. Be sure to specifically address issues of procedural justice.
3. Divide into small groups to create and perform improvisations which dramatize issues of procedural justice. After each improvisation is performed, work together to reach a consensus about what was fair or unfair about the procedure followed. Could it have been improved in any way? The following are some suggestions to get you started.
   - At a city council meeting on an issue of importance to the community, chairman Sal N. Pfeffer gives one group a 30-minute period to make its presentation, while other groups are limited to 10 minutes each.
   - Virginia Hamm takes her neighbor C. Clamp to Small Claims Court to try to get him to pay $35 for damage his dog did to her lawn. She asks another neighbor Rose Hipps to testify on her behalf. Rose refuses, saying that although she thinks Hamm was right, she cannot financially afford to take time off from work to appear in court. Virginia feels she will not get a fair hearing unless she can get Hipps to testify for her.

Lesson 13

Is Procedural Justice Always Important?

The Bettmann Archive

Niccolo Machiavelli (1469-1527) was an Italian statesman who was inspired by the success of the strong, sinister Florentine Duke Cesare Borgia. In his book The Prince, *Machiavelli advocated the idea that if your goal is a good one, such as the creation of a free republic, it doesn't matter what you do to achieve it. In his words, "The act accuses, the result excuses." Would a society based on this philosophy be a society in which procedural justice was considered important? At one point in his career, Machiavelli himself was imprisoned and repeatedly tortured in an attempt to force him to confess that he was a traitor and to name his fellow conspirators. He did neither.*

Most people would agree that Edmond Dantes was treated unfairly and that the procedures used against him were unjust. If he was guilty of anything, it was of being naive.

But what of people who are guilty of a serious wrongdoing? Does it really matter what procedures are used in their cases? Isn't it more important to prevent them from doing wrong again in order to protect law-abiding citizens?

The View of the Founders

The average person may find it difficult to believe that the way information is gathered and the way decisions are made are as important as the decisions themselves. Some might claim, for example, that how Congress, the President, or the courts make their decisions is not as important as what decisions they make. Other people are less concerned about how the police gather evidence against a suspected murderer or what procedures are used during the trial, than about seeing that guilty persons are punished.

However, the Founders of our nation knew from their own experience about the oppression which can occur when procedural justice is denied. Most of the patriots we revere were considered traitors by the British government. They were branded criminals with a price on their heads. Many of their fellow citizens had their homes searched illegally. Many had been transported out of the country for secret trial, often by a judge alone without benefit of a trial by jury.

Based on experiences like these, the Founders wanted to limit the power the government exercises over individual citizens. Therefore, when they formed their own nation, they looked for ways to make sure that the government they created would not be able to unfairly search, arrest, question, try, and imprison citizens.

The Founders wanted to create a system or procedure to ensure that, at all times, ordinary citizens retain control over their government. They wanted to limit the power of government over the individuals the government was created to serve.

What is due process?

In both the Declaration of Independence and the Constitution of the United States, the Founders specifically addressed issues of procedural justice. In 1789, the first Congress added a bill of rights to the Constitution to further protect people from government power and authority. Over the years other amendments were added to the Constitution to ensure that individuals are not "deprived of life, liberty, or property without due process of law."

What do you think?

1.

Scan the list of grievances in the Declaration of Independence, and the amendments to our Constitution. Which pertain to issues of procedural justice? In what ways do the amendments help achieve the three goals of procedural justice?

2.

The phrase "due process of law" was taken directly from the Magna Carta. This "Great Charter" was written to limit the power of British monarchs. But even with the Magna Carta, the colonists had felt the long arm of British power. They were determined that their own "great charter," the Constitution, should not create a government as oppressive as the one they had just overthrown. Where in the Constitution is the phrase "due process of law" used? Paraphrase these sections of the Constitution.

Problem Solving

Seeing "Red"

Keeping in mind the beliefs and experiences of the Founders, and using the intellectual tools you have learned in this unit, tackle the following problem of procedural justice.

Below is an abridged account of the historical facts surrounding the trial of Nicola Sacco and Bartolomeo Vanzetti. This case, which took place in the 1920s, attracted enormous attention around the world. Although the defendants were being tried for murder, many suspected they were actually on trial for their political beliefs. Many questions were raised about the procedures of the trial.

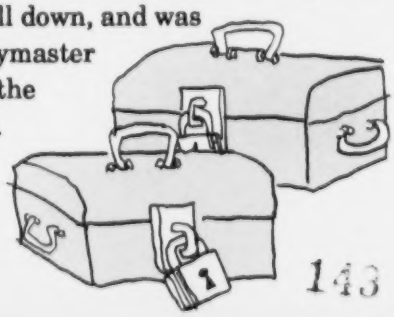
After reading about the case, work with a study partner to complete the procedural justice chart found in Lesson 12, applying it to the Sacco and Vanzetti situation. What arguments would you make to the governor **for** or **against** a stay of execution? Discussion questions follow the story.

The Trial of Sacco and Vanzetti

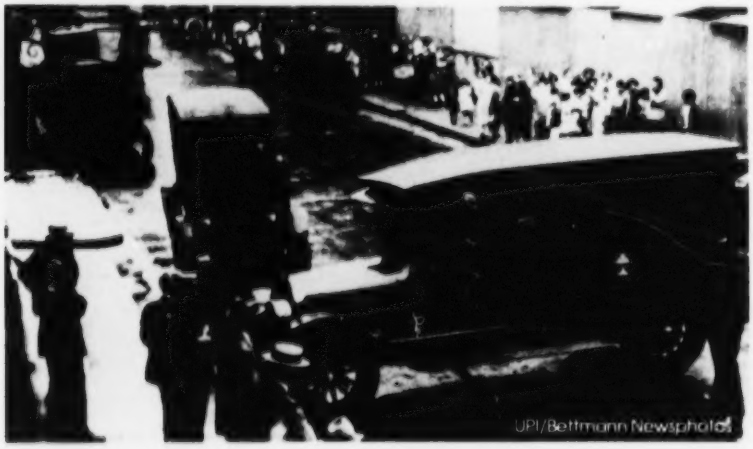
The Crime

On April 15, 1920, the $15,776.51 payroll for the Slater and Morrill shoe factory in South Braintree, Massachusetts was brought to the factory's office. There the money was put into pay envelopes and the envelopes were placed in two steel boxes.

At 3 p.m. the paymaster and his guard were carrying the money down the street to the factory when they saw two men leaning on a fence. Suddenly, one of the men stepped forward, pulled a gun, and shot the guard. The guard staggered, fell down, and was shot again. The paymaster ran, but was hit in the back by two bullets.



Just then, a dark car drove up with several men inside. The killers threw the money boxes into the car, jumped in, and sped away. As the car drove off, someone in it shot the guard again. The guard died there in the street. The pay master died the next day.



The Investigation

At the time of the crime, the police were investigating a similar incident in another town. Both cases involved gangs with dark cars. Witnesses to both crimes said they thought the criminals were Italian.

Shortly after the armed robbery, the police found a car being repaired at a garage that seemed to fit the description of the getaway car. It belonged to an Italian named Mike Boda. On the evening of May 5, 1920, Boda and three other men came to pick up the car. The owner of the garage, who had been alerted by the police, told them that the repairs had not been completed. Boda and one of the men then left on a motorcycle. The other two men were seen getting on a streetcar. After they were gone, the garage owner's wife called the police. The two men who got on the streetcar were arrested in the trap the police had set for Boda. However, he had disappeared and was never seen again.

Neither of the two men arrested had police records. When they were arrested, however, both were carrying loaded guns. They gave their names as Nicola Sacco and Bartolomeo Vanzetti. Both were Italians, and both were aliens.

Nicola Sacco

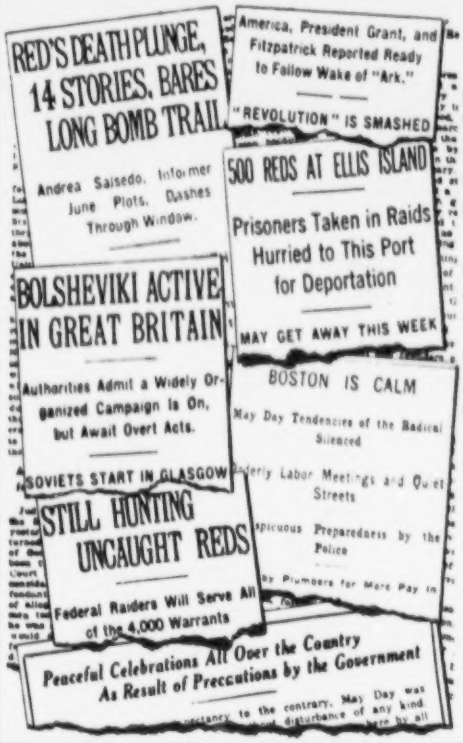
Bartolomeo Vanzetti

At the turn of the century, many Americans became alarmed at the number of Southern European, Catholic, and Jewish immigrants coming to the United States. Nativist organizations sprang up all over the country, denouncing "hyphenated Americans." Should the fact that a person "looked Italian" or was a member of any particular ethnic, racial, or religious group be reason enough to suspect him or her of committing a crime? Do you think that such discrimination exists today?

When apprehended on the streetcar, Sacco and Vanzetti were not told why they were being arrested. Neither man spoke English very well, nor did they understand that they had certain constitutional rights.

At the time of the arrest, the police were unaware that the two men were political radicals who were active in anarchist causes. Anarchists generally hold that all forms of political authority are unnecessary and undesirable. However, when the police chief asked Sacco and Vanzetti questions about their political beliefs, they did not answer honestly. They thought their anarchist associations would get them into trouble.

How might the attitude of the general public affect jury trials in the United States? If you had been defense attorneys in the Sacco and Vanzetti case, what questions would you want to ask potential jurors to make sure they were not prejudiced against your clients?


RED'S DEATH PLUNGE, 14 STORIES, BARES LONG BOMB TRAIL
Andrea Salsedo, Informer June Plots, Dashes Through Window.
America, President Grant, and Fitzpatrick Reported Ready to Follow Wake of "Ark."
"REVOLUTION" IS SMASHED
500 REDS AT ELLIS ISLAND
Prisoners Taken in Raids Hurried to This Port for Deportation
MAY GET AWAY THIS WEEK
BOLSHEVIKI ACTIVE IN GREAT BRITAIN
Authorities Admit a Widely Organized Campaign Is On, but Await Overt Acts.
SOVIETS START IN GLASGOW
BOSTON IS CALM
May Day Tendencies of the Radical Silenced
STILL HUNTING UNCAUGHT REDS
Federal Raiders Will Serve All of the 4,000 Warrants
Peaceful Celebrations All Over the Country As Result of Precautions by the Government

"Red Scare"

In 1920, fear and hysteria over political radicalism were common in the United States and abroad. One reason was that bombings by anarchists had killed a number of people.

There also had been a communist revolution in Russia, where the Bolsheviks, led by Lenin and Trotsky, had taken over the government in 1917. Some people were terrified that anarchists and communists might stir up rebellion in the United States. Because of the widespread public hysteria, law enforcement officers looked everywhere for anyone who might be plotting to overthrow the government. Authorities raided meetings in homes, clubs, and public halls. In 1920 alone, nearly 4,000 suspected revolutionaries were arrested, most of them aliens. Many were eventually deported.

Although they still had not been told why they had been arrested, the suspects were questioned by the district attorney. When he asked questions about their political beliefs, they lied once again. When the authorities learned that Sacco and Vanzetti were not being truthful, they assumed that the suspects had more to hide than their political convictions.

The Trial

On May 31, 1921, Sacco and Vanzetti were brought to trial for the murders. Their lawyer, Fred Moore, was himself a political radical and made no effort to hide his beliefs. In fact, far from concealing his political views, he let everyone know he thought the case was a clear example

of how the capitalist system victimizes downtrodden working people. From the beginning of the trial, there were angry feelings between Judge Webster Thayer and the defendants' lawyer.

During the seven-week trial, the district attorney who had questioned the two suspects when they were first arrested served as prosecutor. The selection of a jury was a long and difficult process; more than 700 people were examined before twelve jurors were chosen.

As the courtroom proceedings began, the quiet little Massachusetts town of Dedham found itself transformed. Crowds gathered, the courthouse was guarded, and everyone was searched before entering. The defendants, always kept in handcuffs, were marched by armed guards between the jail and the courthouse. No one could escape the impression that these were desperate and dangerous men.

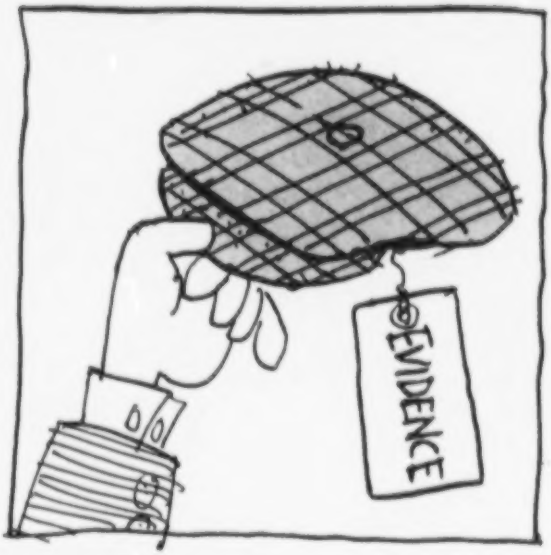
Guards outside the prison where Sacco and Vanzetti were held.

The first witness for the prosecution, Mary Splaine, identified Sacco as the man who had done the shooting from the car. When questioned by Sacco and Vanzetti's lawyer, however, the witness admitted she had seen the car from a distance of 70 feet for no more than three to five seconds, as it was rapidly speeding away.

Cross-examination also brought out the fact that a year earlier at the police station, Mary had picked a picture of another man as the gunman. However, after seeing Sacco three times alone in the jail—never in a line-up as was the usual procedure—Mary changed her mind.

Other witnesses had also failed to identify Sacco and Vanzetti until they spent some time alone with the two men. Under these conditions, witnesses who had previously said they had not seen the killers clearly enough to identify them, altered their statements to identify Sacco and Vanzetti as the men they had seen.

Next, the prosecution showed that Sacco and Vanzetti had lied while being questioned at the police station. The district attorney argued that they hid the truth because they were guilty of the murders. A cap found at the scene of the crime was introduced as evidence. The prosecution claimed it was Sacco's. Sacco, his wife, and his attorney said it was not his and didn't even fit him.



The prosecution then produced expert witnesses to show that the gun taken from Vanzetti upon his arrest actually belonged to the guard who had been shot. The prosecution claimed that Vanzetti had stolen the gun at the time of the murder.

The prosecution also tried to prove that the bullet which had killed the guard had come from Sacco's gun. Ballistics experts called as witnesses testified that, although they could not be certain, it was most likely that the bullet had come from Sacco's gun. Sacco and Vanzetti's lawyer failed to challenge this testimony, although later they presented their own ballistics experts who said that the bullet had not come from Sacco's gun. In fact, the police who arrested the two men had failed to mark the guns and ammunition properly.

Throughout the trial, the prosecutor emphasized the unorthodox political views of the defendants and the fact that they had gone to Mexico during World War I to escape the draft.

After the prosecution presented its case, the defense had its turn. First Vanzetti and then Sacco were called to the witness stand. Both men had trouble proving to the jury's satisfaction where they had been on the day of the murder.

Sacco had not been at work. Vanzetti was self-employed as a fish peddler and could not prove where he had been. When Vanzetti was asked why he carried a gun, he explained that he carried a lot of money when he bought fish for his business and that he needed the gun for self-defense. Vanzetti admitted that he had lied about his political beliefs when questioned by the police, but said it was because he was afraid that he would be sent back to Italy if they knew he was an anarchist.

When Sacco was cross-examined, he admitted that although he had gained many advantages from living in the United States, he had still been quite critical of the government. His defense attorney objected to this line of questioning, saying it had nothing to do with whether Sacco and Vanzetti had committed murder. However, Judge Thayer repeatedly overruled such objections. The defense attorney then produced witnesses that said the defendants had been elsewhere at the time of the murders.

Judge Webster Thayer

The Verdict

Final arguments were given by both sides on July 14, 1921. When the judge gave instructions to the jury, many observers thought his remarks were prejudiced against Sacco and Vanzetti. In his final charge to the jury, Judge Thayer urged jurors to act "as true soldiers...in the spirit of supreme American loyalty."

During the trial, Thayer permitted numerous questions about the defendants' political beliefs. It was also claimed by some people who had attended the trial that they had

overheard the judge outside the courtroom make sneering and hostile remarks about the defendants. However, these claims were never verified.

The jury deliberated for five hours before reaching a verdict. It was the same for both defendants: guilty of murder in the first degree.

The defense attorneys asked for a new trial. Sacco and Vanzetti waited in prison for six years while motions for a new trial moved slowly through the legal system.

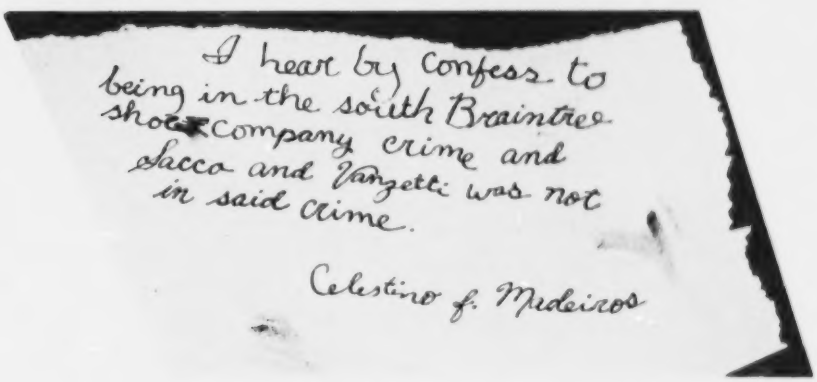
The Appeals

New evidence was presented to support the request for another trial. A man named Gould said he had been walking behind the guard and pay master when they were shot. He swore that neither Sacco nor Vanzetti had been in the getaway car. However, according to Massachusetts law at that time, requests for a new trial had to be made to the judge who had heard the original trial. Judge Thayer denied the request, ruling that just one piece of evidence was not enough to justify a new trial.

Defense attorneys then claimed that the foreman of the jury which had convicted Sacco and Vanzetti had said that radicals should hang whether they were guilty or not. But Judge Thayer denied the second request for a new trial as well.

Months passed. Another appeal was made. The prosecution's main ballistics expert said if he had been asked directly if the bullet which killed the guard came from Sacco's pistol, he would have said it did not. Judge Thayer again denied the appeal.

Then, on November 18, 1925, Celestino Madeiros, a convicted murderer, confessed that he had participated in the shoe factory robber and murders as part of the notorious Joe Morelli gang. Armed with this new evidence, attorneys appealed to the Supreme Court of Massachusetts.


I hear by confess to being in the south Braintree shoe company crime and Sacco and Vanzetti was not in said crime.

Celestino F. Madeiros

However, according to the law at that time, the high court could only review the records of the original trial and could not review any new evidence. Thus, the court's decision was to let the verdict stand.

Finally, on April 9, 1927, Sacco and Vanzetti were brought into court for final sentencing. They were asked if they had anything to say. Vanzetti rose and spoke.

"I am suffering because I am a radical and indeed I am a radical. I have suffered because I am an Italian and indeed I am an Italian. I would not wish to a dog or a snake, to the most low and unfortunate creature of this world—I would not wish to any of them what I have had to suffer of things I am not guilty of."

Sacco and Vanzetti were sentenced to die in the electric chair.

The Execution

By this time, public opinion had begun to change and many people, conservatives and liberals alike, began to call for a new trial. Protests against the executions became stronger. A newspaper editorial summed up people's feelings:

"No man, we submit, should be put to death where so much doubt exists."

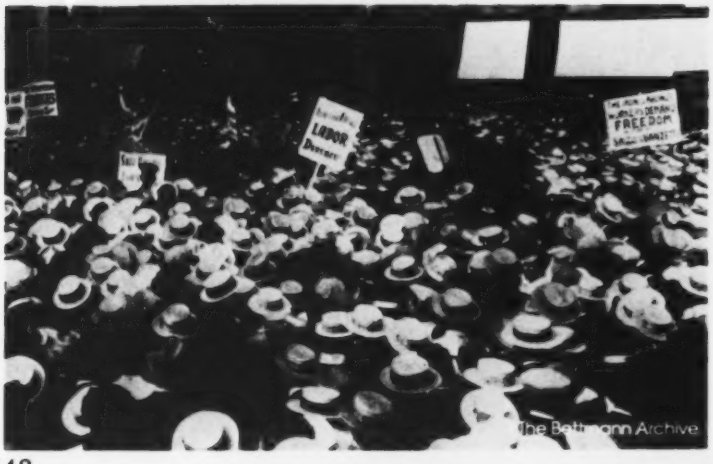
Although defense attorneys continued to request a new trial and even tried to appeal the case to the United States Supreme Court, they were unsuccessful. The governor of Massachusetts was then asked for a stay of execution. He refused the request.

Protests grew all over the world. In some countries, crowds marched on American embassies. In France, Italy, and the United States, workers went on strike. Bombs were set off in Philadelpia and New York. Meanwhile, Sacco and Vanzetti continued to maintain their innocence.

As the hour for the execution approached, several thousand people gathered outside the jail. Hundreds of armed police held back the crowd. At last, on August 23, 1927, after more than seven years in jail, Sacco and Vanzetti were executed in the electric chair.

What do you think?

1. Were the goals of procedural justice met in the Sacco and Vanzetti case? Why or why not?
2. Information made public over fifty years after the trial ended has been interpreted by some to suggest that Sacco was guilty of murder. He belonged to a Sicilian radical group sworn to secrecy. Recently opened FBI files indicate that the state probably did not have enough evidence to convict Vanzetti of murder, although it suggests he may have been involved with the armed robbery in some way. Other information, however, seems to point to the Morelli gang. Does this information in any way alter your opinion as to whether or not the procedures used in the case were fair?
3. After the executions, protest continued. Then, in April 1959, a member of the Massachusetts state legislature proposed that the governor declare a retroactive pardon, based on the contention that Sacco and Vanzetti had been denied a fair trial in violation of the due process clause of the Fourteenth Amendment of the U.S. Constitution and protections in the Bill of Rights of the Massachusetts Constitution. If you had been in the legislature, would you have voted for this bill? Why or why not?
4. What, if any, issues of corrective and distributive justice were raised in the Sacco and Vanzetti case?



Workers in many countries protested the executions of Sacco and Vanzetti.

The Bettmann Archive

Using the Lesson

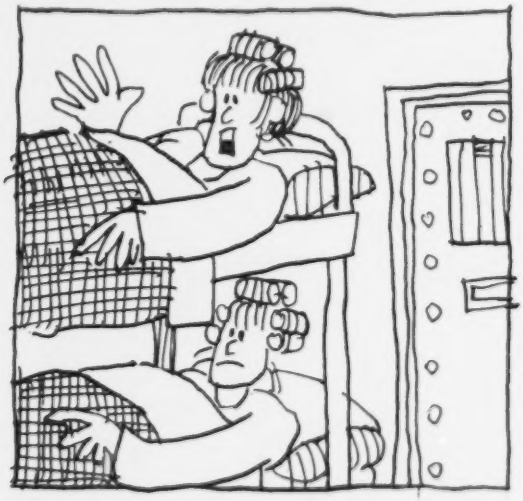
1. "Due process is that procedure which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial," wrote American statesman Daniel Webster (1782-1852). According to Webster's definition, how does due process promote the goals of procedural justice? Write your answer in your program notebook.

2. "The fact of the whole matter is that very many persons look upon the whole procedure [raids, arrests, and deportations] as all wrong and a travesty of justice. If there was the least evidence against these men of being plotters and agitators against law and order, the burden and duty of the authorities was to see that these charges were either proven or disproven in the law courts."

   Claremont Eagle Times, September 1920

   Unlike Sacco and Vanzetti, many arrested in the Red Raids of the 1920s were never even given the benefit of a trial. If you had been an editorial writer in 1927, what would you have written about the Sacco and Vanzetti case in terms of the three categories of justice you have studied in this program? Write the editorial in your program notebook.

3. Design a cartoon about due process.



Lesson 14

How Do You Balance the Goals of Procedural Justice With Other Interests of Our Society?

In recent years, there has been concern over widespread crime and the time and money spent on court procedures. These problems have prompted some citizens to advocate taking a new look at the provisions in the Constitution that are designed to ensure procedural justice.

In this lesson, you will have a chance to examine issues of procedural justice raised by the Fourth Amendment.

Amendment IV

Security From Unreasonable Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Ratified December, 1791.)

Problem Solving

HR 1239: The Law Enforcement Assistance Act

In 1988, two congressmen, one a former state supreme court judge and the other a former state prosecutor, introduced a bill in Congress designed to assist law enforcement officers, particularly in their effort to combat drugs. Similar provisions were added to the "crime package" President Bush recommended to Congress in 1989.

Pretend to be at a town meeting. Work in small groups to analyze the background of the bill and its implications with regard to the Fourth Amendment in particular, and to procedural justice in general. Would such a bill further or retard the goals of procedural justice? Would the bill strike a good balance between the goals of procedural justice, other interests, and corrective justice?

To aid in your group discussion, choose a group secretary to record arguments for or against the bill. Afterward, reconvene as an entire class. Each of you will now be considered a member of Congress. Choose a Speaker of the House to moderate discussion of HR 1239 and a recording secretary. Will you speak for or against the proposed legislation?

After all those who wish to speak have been heard, take a role call vote. Does the bill pass? (You may wish to send a description of this activity and its results to your own congressional representative.)

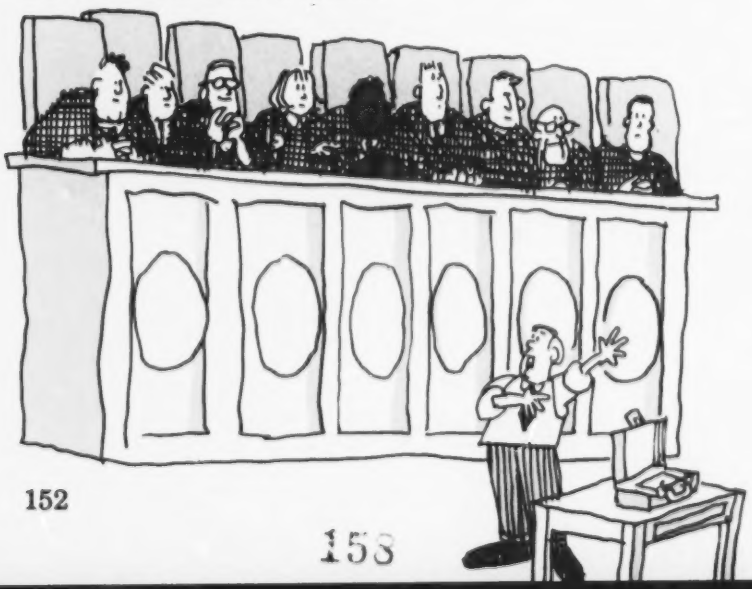
"Do you believe that a murderer going scott-free is the right price to pay for a mistake by a magistrate?" asked Chief Justice Warren Burger.

"The real question is whether a man is to be imprisoned if his trial was lacking in constitutional fairness," counsel replied.

Oral argument in *Stone v. Powell*, 428 U.S. 465 (1976)

The Fourth Amendment was designed to protect Americans from unreasonable search of themselves and their property by government authorities. In colonial times, the British government had issued writs of assistance which allowed officials to search colonists and their property without having a warrant (special written permission) from a judge. To protect Americans from unreasonable searches and seizures, the Framers of the Bill of Rights added the Fourth Amendment to our Constitution.

Over the years, the Supreme Court has developed a series of rules to help enforce this constitutional protection. The purpose of these rules is to hold government officials accountable for their actions when they are searching individuals or their property.



One of these rules is called the exclusionary rule. This rule states that evidence obtained illegally in violation of a person's constitutional rights cannot be used against that person in a court of law. The reason is that if the government's case could profit by illegally searching for and seizing evidence, the Fourth Amendment would continually be violated. *(Elkins v. U.S.*, 1960)

In *Mapp v. Ohio* (1961), in the majority opinion, the Supreme Court justices explained that the exclusionary rule is needed because:

- Every individual has the constitutional right to be protected from unreasonable searches and seizures
- The American system of justice would lose its integrity if the use of illegal evidence is allowed
- The rule is the only effective way to deter government misconduct

The justices wrote, "There are those who say...that under our constitutional exclusionary doctrine 'the criminal is to go free because the constable has blundered.'...In some cases this will undoubtedly be the result. But...'there is another consideration—...judicial integrity.' The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence [the Constitution]."

As certain justices retired and others were appointed to the high court, opinions on this issue changed. In 1976, in the case of *Stone v. Powell*, the Court held that the exclusionary rule was not required in all cases but was meant to be used "pragmatically"; that the rule was meant to deter illegal searches, but not to forbid "the introduction of illegally seized evidence in all proceedings or against all persons."

Since then, the Court has allowed illegally seized evidence to be introduced in grand jury proceedings and in other selected instances.

Critics of the Exclusionary Rule

Over the years, criticism of the exclusionary rule has grown. Some people have argued that it is better to invade a person's privacy than allow a guilty criminal to go free.

They argue, how can the public have respect for law and order if, by law, the court system sets known criminals free "on technicalities?"

Others say there are better ways to deter, or punish a government official who has violated the Fourth Amendment—for example by a fine or dismissal. Furthermore, some argue, the current system does not really deter law enforcement officials from conducting illegal searches and seizures. Even when evidence is not allowed in a trial, the individual officer is not reprimanded in any way; nor is it ever explained to the officer why what he or she did was wrong.

Dallin Oaks in the *University of Chicago Law Review* wrote, "One of the harshest criticisms is that the exclusionary rule is ineffective.... It diverts the focus of the criminal proceeding from the guilt or innocence of the defendant to a trial of the police. Only a system of limitless patience with irrationality could tolerate the fact that where there has been a wrong, the defendant's, he will be punished, but where there have been two wrongs, the defendant's and the police's, both will go free."

Recently the debate has focused on the suggestion that there should be a "good faith" exception to the exclusionary rule. In other words, if the police reasonably believed they were following legal search and seizure procedures, and it turns out they were not, the illegally obtained evidence should be allowed in court.

Former Chief Justice Warren Burger writes, "I submit that society has at least as much right to expect rationally graded responses from judges in place of the universal 'capital punishment' we inflict on all evidence when police error is shown in acquisition."

In 1988, two congressmen introduced a bill that would legalize the "good faith exception." Congressman Jim Courter of New Jersey, a former state prosecutor and cosponsor of the legislation, said, "At a time our citizens are demanding more effective action against major drug traffickers and criminals, the Law Enforcement Assistance Act will go a long way towards providing our police with the tools they need to get the job done."

Congressman Chuck Douglas of New Hampshire, a former state supreme court justice, argued, "The... tightening of rules concerning what can and cannot be allowed as evidence in a criminal trial has led to a standard that penalizes honest police officers, bottles up courts and frequently turns criminals back onto the streets. The Law Enforcement Assistance Act... would modify the exclusionary rule to allow evidence seized in good faith.

It is clear that the exclusionary rule imposes an inflexible and drastic sanction without regard to the nature, circumstances, or degree of police misconduct. Whether an honest mistake or outrageous misconduct, the result is always the same—the evidence is excluded even if it means immunity from prosecution."

101ST CONGRESS
1ST SESSION

H.R. 1239

To amend title 18 of the United States Code to limit the exclusion of evidence obtained as a result of a search or seizure.

IN THE HOUSE OF REPRESENTATIVES

March 2, 1989

Mr. COURTER (for himself and Mr. DOUGLAS) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18 of the United States Code to limit the exclusion of evidence obtained as a result of a search or seizure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **SECTION 1. SHORT TITLE.**

This Act may be cited as the "Law Enforcement Assistance Act"

2

SEC. 3509. LIMITATION OF THE FOURTH AMENDMENT EXCLUSIONARY RULE.

"Except as specifically provided by law, evidence which is obtained as a result of a search or seizure and which is otherwise admissible shall not be excluded in a proceeding in a court of the United States if the search or seizure was undertaken in an objective, reasonable, good faith belief that it was in conformity with the fourth amendment to the Constitution. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such an objective, reasonable, good faith belief, unless the warrant was obtained through intentional and material misrepresentation.".

SEC. 3. CLERICAL AMENDMENT.

The table of sections for chapter 223 of title 18, United States Code, is amended by adding at the end the following new item:

"3509. Limitation of the fourth amendment exclusionary rule.".

O

Opponents of the bill contend that the Fourth Amendment is not a mere "technicality." They say that the bottom line is procedural justice—that the exclusionary rule remains because no effective alternative means exists to enforce the Bill of Rights against the misconduct of government officials.

Furthermore, they argue that street crime is not a result of the exclusionary rule, while the freedom and privacy of law-abiding citizens is certainly protected by it.

In fact, the number of cases thrown out of court because of the exclusionary rule is very small. The National Institute of Justice states that less than half of one percent of all federal cases are not prosecuted because evidence was obtained illegally. In 1980, the Center for State Courts published the opinion that "properly conducted search warrant procedures can protect constitutional rights without hampering the efforts of law enforcement."

In California, less than one percent of all accused felons are **not** prosecuted because of illegal search and seizures. Of those released, three-fourths are drug-related cases. These statistics are similar to those from other states.

Opponents of the legislation argue that the proposed bill is "much ado about nothing." If anything is needed, some say, it is a bill to protect the American public against posturing politicians who should be spending their time truly devising ways to combat crime, not destroying our most fundamental constitutional protections.

However, those in favor of the bill counter that although the statistical percentages look small, they translate into thousands of criminals going free on technicalities each year.

Opponents of the bill quote Mr. Justice Day, who in *Weeks v. United States* (1914) wrote, "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment, declaring his right to

be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land...."

What do you think?

1. Can you think of ways other than the exclusionary rule to prevent unreasonable searches and seizures by government officials?
2. In your opinion, would HR 1239 further the goals of procedural justice? Of corrective justice? Explain your answer.
3. In its attempt to deter crime and punish criminals, would HR 1239 impinge too greatly on the protections of the Fourth Amendment? Explain your answer.

Using the Lesson

1. In the introduction to this unit, you learned that procedural justice has been called the "keystone of liberty" and the "heart of the law." Express what these phrases mean to you in a poem, sketch, painting, or photograph.
2. Write an editorial in your program notebook entitled "Not Even the Government is Above the Law." Use examples from American history and current events to elucidate and justify your opinions.

Unit 4

Concluding Activity

Not all questions of procedural justice involve criminal law. Read this selection, based on the case of *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (1965).

Then use the intellectual tools presented in this unit and the chart in Lesson 12 to analyze the problem. Were the procedures used by the Federal Power Commission to gather information and make a decision fair?

Afterward, enact the appeal hearing, dividing into groups to play the following roles:

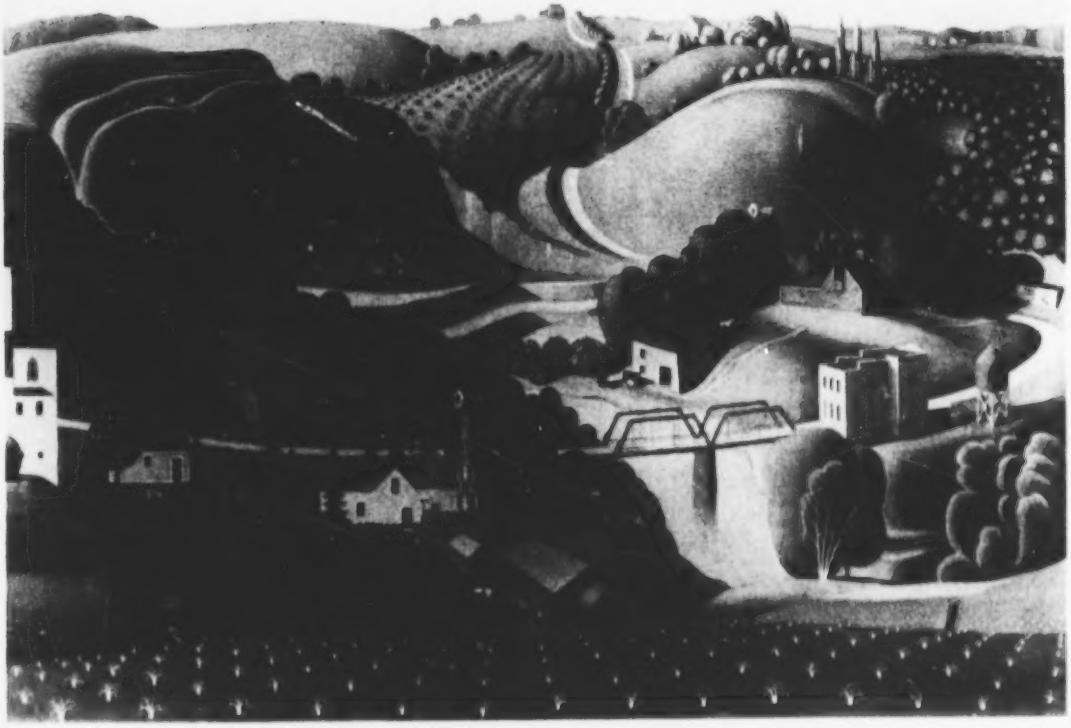
Judges on the United States Court of Appeals
Mr. Lurkis
Citizens and commercial groups who oppose the plant
Attorneys for the anti-plant citizen groups
Representatives and attorneys for Con Edison
Citizens and commercial groups who favor the plant
Members of the Federal Power Commission
TV, radio, and newspaper reporters

After the hearing, compare your opinions about the controversy with the decision of the actual United States Court of Appeals. What, if any, improvements in the procedure would you suggest and why? How would your suggested changes better promote the three goals of procedural justice?

Stormy Weather

-1-

The Federal Power Commission (FPC) is an agency of the executive branch of the federal government. A major purpose of this commission is to control the use of the water power resources of this country in the best interests of the people.



Grant Wood, *Stone City, Iowa, 1930,* Grant Wood Collection, Joslyn Art Museum, Omaha, Nebraska

The commission has the authority to give licenses to private companies to use rivers for commercial purposes, such as the development of hydroelectric power plants. The

law requires the commission, before giving a private company a license, to make sure that the company's plan will

- fit into an overall plan to improve or develop a waterway for the use or benefit of interstate or foreign commerce
- improve water power development
- be useful for other beneficial purposes, such as public recreation and the preservation of the natural beauty of an area, its resources, and historical sites.

The commission may require a private company applying for permission to use public waterways to change its plans in any way the commission thinks is in the public's interest.

-2-

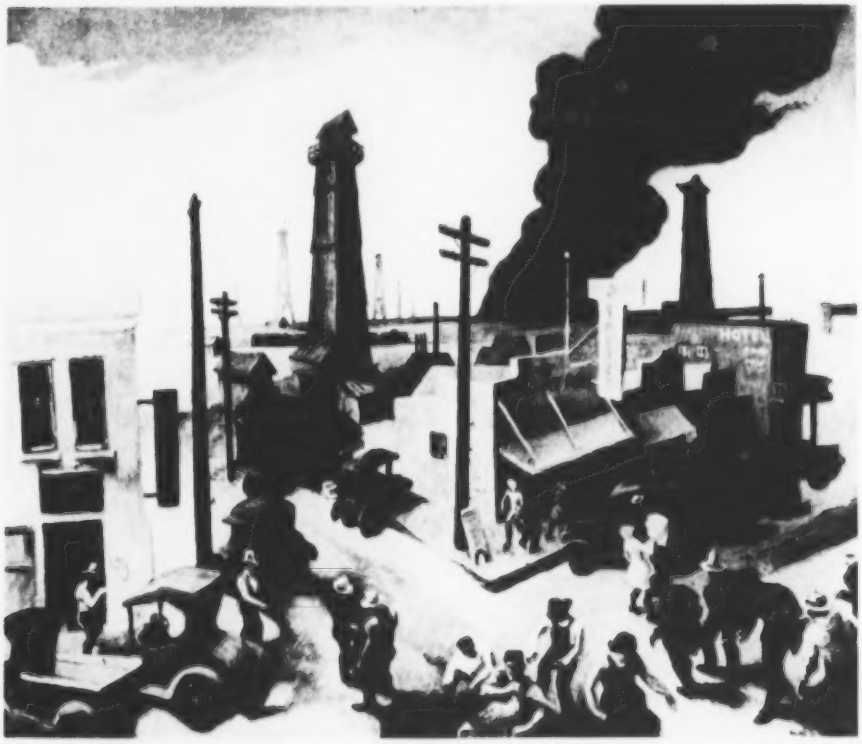
On November 17, 1964, the Consolidated Edison Company of New York asked the commission for a license to build a hydroelectric plant on the west side of the Hudson River at Storm King Mountain in Cornwall, New York.

The plant in Cornwall would be the largest of its kind in the world. It would have three major parts—a storage reservoir, a powerhouse, and transmission lines. In periods of maximum use of electricity in New York City and surrounding areas, the plant at Storm King Mountain would be able to provide the extra amount of electricity needed.

The proposed location of the Storm King Mountain plant is an area of unusual beauty and major historical significance. The Hudson River at that point is one of the most beautiful sections of river scenery in the world. It is also a spawning ground for shad and the rare Hudson River striped bass. There is a multimillion-dollar-a-year fishing industry, both commercial and sport, at the location. When the commission heard of Consolidated Edison's plan, it was

concerned that the plan might have a negative effect on the area's scenic, historical, and recreational values.

The storage reservoir would be located on Storm King Mountain about 1,000 feet above the powerhouse. It would be connected to the powerhouse by a tunnel 40 feet in diameter. The powerhouse would be 800 feet long. The transmission lines would run under the Hudson River to the east bank and then underground for an additional 1.6 miles to a station the company would build in the town of Phillipstown. From there, the lines would run overhead on towers 100 to 150 feet high, requiring a path 125 feet wide for 25 miles until they reached the company's main connections in New York City. The lines would run through Westchester and Putnam Counties.



Thomas Hart Benton, *Boomtown, 1928,* oil on canvas, 45" x 54". Memorial Art Gallery of the University of Rochester; Marion Stratton Gould Fund

Two days after the Federal Power Commission heard of the plan, an agency of the state government in New York held hearings on the project. This agency, the New York Joint Legislative Committee on Natural Resources, heard 107 witnesses give their opinions about whether the plant should be built. The majority were opposed to the plan.

Mr. Lurkis, a consulting engineer with 39 years experience, presented an alternative plan for use by Consolidated Edison. His plan, he claimed, would save the company's customers $132,000,000 and make it unnecessary to build the plant at Storm King Mountain and run transmission lines across the area to New York City. The New York Legislative Committee decided that the subject required further investigation and study before the company's plan could be acted upon.

The hearings before the committee focused the attention of many fishing groups on the issue. Representatives of these groups asked for permission to make presentations to the Federal Power Commission. They wanted to show that the power plant would destroy the spawning ground of fish in the area because their eggs would be sucked up into the plant and killed. This information was contrary to information given the commission by an expert who testified for Consolidated Edison, who claimed that the spawning grounds would not be damaged.

The commission denied the representatives of the fishing groups the right to be heard, saying, "The project will not adversely affect the fish resources of the Hudson River if adequate protective facilities are provided."

On January 7, 1965, a local taxpayer and consumer group offered to have Mr. Lurkis testify before the commission and present his alternative plan for consideration. The commission denied Mr. Lurkis the right to be heard.

-4-

On March 9, 1965, the Federal Power Commission granted a license to Consolidated Edison to construct the plant at Storm King Mountain. It delayed approval of the overhead transmission lines until hearings scheduled for the following May. A commissioner who had voted against giving permission to Consolidated Edison to build the plant stated that if the commission had resolved all doubts about alternative plans, the record should be amended to reflect it.

On April 26, 1965, a group of local citizens opposed to the project asked the commission to let them and others speak at the forthcoming May hearing on the overhead transmission lines. They were interested, in particular, in discussing the practicality and cost of underground transmission lines. The commission denied the group the right to be heard. It claimed that adequate attention to this subject had already been given, although the records did not support this claim. The group was also denied the right to present Mr. Lurkis's alternative. The commission claimed that it had already considered his alternative although again there was no evidence to that effect in its records.

-5-

According to law, any person or group that is "aggrieved" by an order of the Federal Power Commission has the right to have that order reviewed by the United States Court of Appeals. The citizens' group asked for a hearing before the Court of Appeals and requested it to set aside the decision of the Federal Power Commission. The case was argued October 8, 1965.

Program Review

Lesson 15

Are There Situations Which Raise Issues in All Three Categories of Justice?

You have had the opportunity to explore issues in each of the three categories of justice—distributive, corrective, and procedural. However, many situations in our complicated world raise not just one issue of justice, but many.

As a concluding activity for this program, use the various intellectual tools you have learned and the analysis charts provided in each unit to analyze and discuss the following case, which raises questions in all three categories of justice.

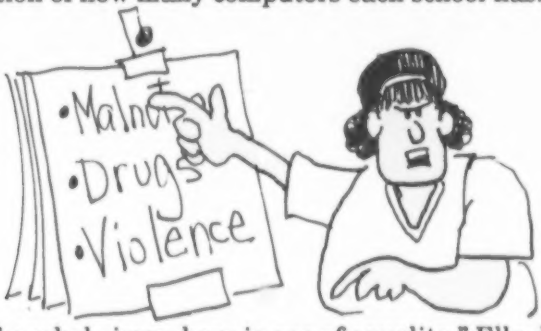
Problem Solving

School Daze

Imagine that you live in a state where the financing of local school districts is primarily dependent on local property taxes. If you live in a district rich in property taxes, your schools have many extra-curricula activities, a smaller student-teacher ratio, and better school facilities, such as a deluxe auditorium, computer bank, and television

station. A district rich in property tax revenues because of expensive homes and other properties within the district, is able to keep taxes relatively low and still spend twice as much on each pupil's education as a district with less expensive homes and properties.

Parents and property owners from the Downenout District have petitioned their representatives in the state legislature to remedy the situation in some way, or they will bring court action. Ella Mentary, spokesperson for Citizens for Better Schools, has argued that this is not just a question of how many computers each school has.



"The whole issue here is one of equality," Ella declared. "Just because certain students happen to live on the wrong side of the economic tracks doesn't mean they should be penalized educationally. In fact," Ella continued, "it might be argued that it is precisely those students who need a quality education most so they can escape poverty and its accompanying furies, Malnutrition, Drugs, and Violence."

Ella Mentary's remarks were challenged, however, by Seymour Clearly, founder of Citizens for a Quality Education. "Nowhere does our Constitution promise each citizen an equal education. The government only needs to provide a minimum level of educational opportunity for all children. An argument can be made that totally destitute children need to be given a fair chance to succeed educationally. But where do you draw the line? How poor must a district be? And who is going to foot the bill for this 'equal' education?"

Ed E. Fie, state legislator from one of the wealthier districts, concurred with Clearly. In a live TV interview in front of the statehouse, Rep. Fie said, "In addition to other points raised, there is the whole question of local control of schools. Any new state policy or ruling by a federal court on this issue could very well take from parents and taxpayers the power to control local education. Let's not forget that the Constitution did not delegate all power to the federal and state governments. Under federalism, citizens retain the power to control their own destinies. They have the right to see that their own children get the best education that money can buy—money, I might add, earned by individual citizens, not by the government or some collective group of do-gooders."

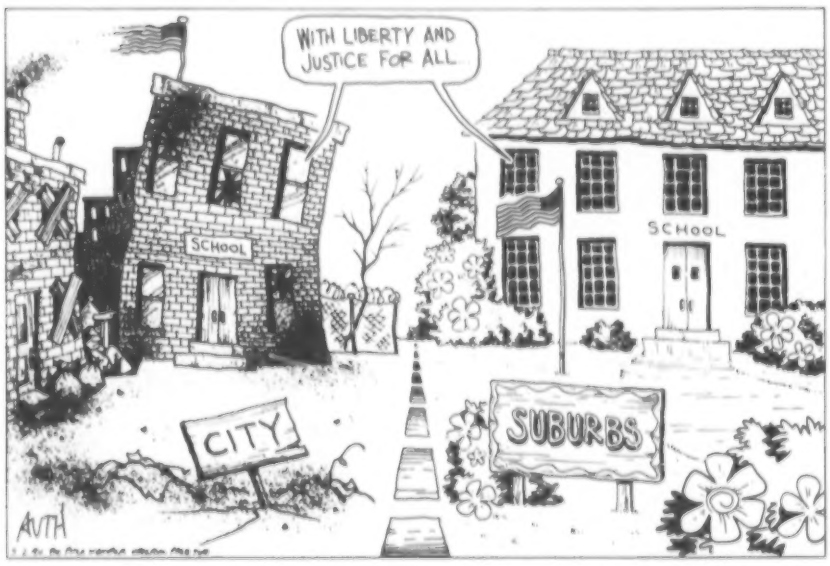
As a result of this heated debate, a public forum has been scheduled. Governor Anne U. L. Rate and representatives from the state school board and appropriations committee have been invited to attend. State superintendents of schools, local school board presidents, and representatives from parent groups and taxpayers associations, including Bill O'Sayle from the Ax the Tax League and Sharon Sharalike from the Redraw the Districts Committee will be attending.

Holding a Public Forum

Simulate the public forum, playing the various roles mentioned above, as well as members of the media covering the event. Your goal is to try to arrive at a consensus about what would be the best way to handle the problem of educational inequalities in the state.

To prepare for the forum, work in small groups to answer the following questions, using the intellectual tools you have learned in this program to assist you.

1. What issues of distributive justice are raised by this problem?
2. What procedures should be used to investigate the problem in order to gather the information needed to make a fair and wise decision?
3. What recommendations would you suggest to correct the problem?



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After the simulation, you may wish to compare your recommendations with the United States Supreme Court decision in the 1973 case of San Antonio Independent School District v. Rodriguez which your teacher can share with you.

Wrap Up

Congratulations for completing this program on justice!

You have had an opportunity to discuss various issues of justice, and in the process, to learn to use sets of intellectual tools that will be helpful in analyzing problems of justice you may face in your everyday life.

You also have had a chance to explore your own personal values and interests which have an impact on your views and opinions about issues of justice.

Finally, you have begun as young citizens to examine how our society responds to problems of justice and how we, as a nation, strive to fulfill sometimes competing constitutional goals—

"to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity..."